

NO_x SIP Call Budget
Demonstration for Missouri
April 26, 2005

Background

NOx SIP Call Phase I

The U.S. Environmental Protection Agency (EPA) issued the Oxides of Nitrogen (NOx) State Implementation Plan (SIP) call on October 27, 1998. The NOx SIP call was designed to assist downwind ozone areas in attaining the 1-hour and 8-hour national ambient air quality standards by providing upwind NOx emission control. This rulemaking was developed through the EPA interpretation of the Ozone Transport Assessment Group (OTAG) recommendations and subsequent modeling and cost analysis of NOx controls to reduce ozone transport. A summary of the OTAG process and recommendations can be found in Appendix K of this document. The following states were included in the finding of significant contribution control region (subject to control): Alabama, Connecticut, Delaware, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Massachusetts, Maryland, Michigan, Missouri, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, West Virginia, and Wisconsin.

As written, the NOx SIP Call required each state in the control region to develop and submit a SIP by September 30, 1999, that “contains adequate provisions prohibiting its sources from emitting air pollutants in amounts that will contribute significantly to nonattainment, or interfere with maintenance, in one or more downwind states”. The controls prescribed in each state’s SIP were required to be in place by the compliance deadline of May 1, 2003. The EPA developed a test based on four factors to determine if emissions contribute significantly: (1) the overall nature of the ozone problem in the eastern U.S. (collective contribution), (2) extent of downwind nonattainment to which upwind state’s emissions are linked, (3) ambient impact of the upwind state’s emissions, and (4) availability of highly cost-effective control measures for upwind emissions.

In order to evaluate the impacts from each upwind state, the EPA relied on OTAG subregional modeling, state-by-state zero-out Urban Airshed Model-V (UAM-V) modeling, and Comprehensive Air Quality Model with Extensions (CAMx) source apportionment modeling. The test for significant contribution from the CAMx and UAM-V zero-out modeling included the magnitude of contribution, the frequency of contribution, and the relative amount of contribution.

The overall amount of emission reduction required by each state was the sum of the utility component, the non-utility boiler component, the cement kiln component, and the stationary I/C engine component. The total budget number is not critical because the EPA states in the SIP call, “*The amount of the 2007 overall budget is used to compute the level of controls that would result in the appropriate amount of emissions reductions, given assumptions concerning, for example, growth. To this extent, the 2007 overall budget is an important accounting tool. However, the State is not required to demonstrate that it has limited its total NOx emissions to the budget amounts. Thus, the overall budget amount is not an independently enforceable requirement.*” Therefore, the critical number is the amount of emissions to be prohibited. This statement is extremely important. In addition, the state trading budget is a fixed quantity and will be used for compliance purposes. This budget will include all of the controlled utility and large non-utility boilers.

Banking of NOx emissions could be accomplished in the first control period (2003) and every following year. Also, trading was allowed on a one-for-one basis throughout the control region with no restrictions. If a state decided to adopt the model-trading rule contained in the SIP call, several issues were addressed. Allocation timing is an every-year allocation for three years in advance (September 1999 submittals provide allocation for 2003 ozone season). Allocation methodology is based on heat-input.

In May of 1999, the United States Court of Appeals for the Washington D.C. circuit issued a stay of the NOx SIP call until April of 2000 or until court ruled on the litigation. In March of 2000, the court ruled on the litigation by removing Missouri and several other states from EPA's NOx SIP call and by delaying the implementation by a year.

NOx SIP Call Phase II

Phase II of the NOx SIP Call Rule was finalized by the EPA on April 21, 2004. Phase II requires the eastern one-third of Missouri to participate in the NOx SIP Call.

This document describes Missouri's approach to demonstrate the NOx SIP call budget for the eastern one-third of Missouri. The final EPA rule sets a total budget for NOx emissions of 61,406 tons of NOx per ozone season in the eastern one-third of Missouri. It also set a budget for Electric Generating Units (EGUs) of 13,400 tons per ozone season in the eastern one-third. The following are the affected NOx sources in which the budget assumes control levels of:

- (a) 0.15 lbs/mmBtu for EGUs;
- (b) 82 percent emissions reductions for large natural gas-fired stationary internal combustion (IC) engines;
- (c) 90 percent emissions reductions for diesel and dual fuel stationary internal combustion engines;
- (d) 60 percent emissions reductions for non-EGU boilers and turbines; and
- (e) 30 percent emissions reductions for cement manufacturing plants;

The total budget is the sum of all the affected NOx sources and projected NOx emissions from non-affected sources, in addition to area, non-road mobile and highway sources.

Emission Budget

The EPA developed emission budgets using the protocol in Appendix E. Missouri analyzed EPA's budget using data collected through emission inventory questionnaires and through industry specific NOx emission surveys. Any changes to EPA's budgets are discussed below.

Electric Generating Units

Initially, the EPA's electric generating unit budget included many smaller generating units at Municipal utilities throughout Missouri. EPA amended the definition of electric generating unit, thereby removing most of these smaller sources from the electric generating unit inventory. Missouri is adopting EPA's electric generating unit inventory and are tentatively accepting EPA's inventory for small electric generating units that are not included in this inventory.

Industrial Boilers

EPA developed a base and budget inventory for all non-electric generating units in the state as part of the Phase I NOx SIP call rulemaking. This inventory included several subgroups that were to be controlled. Based on EPA's analysis, industrial boilers, cement kilns, and stationary internal combustion engines could be controlled on a cost effective basis.

EPA determined that industrial boilers greater than 250 MMBTU per hour of heat input could be controlled on a cost effective basis. EPA based its list of industrial boilers for the budget analysis on source classification codes used in emission inventory questionnaires. These source classification codes are used as a means of allowing a source to report emissions based on a specific process. Table 1 contains a list of the industrial boilers in the Phase II control region that EPA imposed control requirements on as part of Missouri's budget calculation.

Missouri commented several times during the development of EPA's budget on changes that Missouri believed were necessary in the industrial boiler class. Several of these changes remain to be a problem in the list of sources included in EPA's budget. Therefore, Missouri is submitting this budget demonstration based on the corrected inventory.

The EPA's budget includes controls at the boilers listed in the top portion of Table 1. As you can see, EPA included controls on eight (8) units. Two (2) of these units, Doe Run – Buick Resource Recover Center point 036 and River Cement Company point 094, were part of the Department of Natural Resources' comments submitted during the original SIP call stating that these units were not boilers by definition and should not be included in this list of controlled units. Doe Run Company also submitted comments during the initial NOx SIP Call comment period. The department continues to contend that these units are not boilers. These units are in process heating devices. Therefore, they do not meet EPA's definition of sources to control as part of the NOx SIP call.

The boilers at Ashley Street Station number 2 through 4, do not meet the size requirement established by EPA. These units have a boilerplate capacity, as reported to the department by the St. Louis Local Agency, of 108, 101, and 101 MMBtu per hour of heat input respectively. EPA's applicability level for boiler control is set at 250 MMBTU per hour of heat input, thus exempting these units from the controlled sources inventory.

The bottom of Table 1 contains the sources that Missouri is proposing to include as controlled boilers for the NOx SIP Call budget demonstration. Based on Missouri's emission inventory data, these are the only three boilers that currently meet the 250 MMBTU per hour of heat input criteria in the eastern one-third of the state. Missouri is capping the emissions from these facilities based on a 60 percent reduction in emissions from the 1995 actual emission level. This is an emissions cap establishing the budgeted emissions reductions from this source category.

Cement Kilns

The top half of Table 2 contains a list of the Portland Cement Kilns for which EPA had budgeted emission reduction as part of Missouri's NOx SIP call budget. The bottom half of the same table contains Missouri's budgeted emission for this NOx budget demonstration. In comparison, Missouri is adding one facility to the budget demonstration. EPA's analysis does not appear to

contain Lone Star Industries, Inc, now referred to as Buzzi Unicem Cape. This facility was in operation during the 1995 and 1996 timeframe. Missouri submitted comments during the rulemaking process for the original NOx SIP call that this unit should be added and EPA responded at that time that it would be. However, based on the information provided to Missouri by EPA Region VII it does not appear that this addition was completed.

EPA also included emission point 30 at Continental Cement Company in its inventory of Portland cement kilns. EPA did not include control on this point. Missouri does not include this point in the inventory of control Portland Cement kilns as Continental Cement Company only has one kiln at this facility and that kiln is reported in the inventory as emission point 32. Missouri includes emission point 30 in the inventory of uncontrolled sources for the purpose of the budget demonstration.

Missouri has based the calculation of uncontrolled emissions, 2007 base in Table 2, on data submitted by the individual cement kilns. The emission factors used in the calculation of the budget were 10.41, 10.93, 5.4, and 15.42 pounds of NOx per ton of clinker produced for Continental Cement Company, Buzzi Unicem River Cement, Buzzi Unicem Cape (Lone Star Industries, Inc.) and Holcim (Holnam, Inc.) respectively. These emission factors are based on stack tests and related emission calculations as supplied to Missouri by each individual kiln. This data is supplied as Appendix G to this demonstration document. In addition, Holcim supplied a correction to the throughput for the year 1995 that was included in the budget calculation.

Internal Combustion Engines

EPA included one source in the Stationary Internal Combustion Engine control category, which was Depaul Health Center. According to EPA's budget, Depaul Health Center has an engine that is a 300 ton per ozone season source in 1995. However, Missouri's emission inventory data for this source show that the actual emissions in 1995 are approximately one ton per ozone season. EPA proposed to control stationary internal combustion engines that were greater than 1,300 horse-power and that emitted greater than 1 ton per day of NOx during the ozone season. Therefore, Missouri has not included any large stationary internal combustion engines in the determinations of the NOx emission budget.

Other category

Missouri is not required to submit SIP revisions to address additional emission reductions from area, non-road, and mobile sources since Missouri is not relying on any additional reductions beyond the anticipated federal measures in the mobile and area source categories. Therefore, Missouri is adopting EPA's 2007 projection to meet the overall eastern one third budget.

Control Methods

The purpose of control measures is to reduce emissions of NOx and ensure compliance with the federal NOx control plan to reduce the transport of air pollutants. No reductions are required from area, non-road mobile and highway mobile sources. However, there are a number of sources that need to be addressed through rulemaking or other enforceable mechanisms. These rulemakings will set a budget for EGUs and large non-EGU boilers and establish NOx control

equipment and NOx emission levels for Cement Kilns and large stationary internal combustion engines.

Electric Generating Units and Industrial Boilers

In an effort to assure an approval of the SIP, Missouri's rule, 10 CSR 10-6.360 Control of NOx Emissions from Electric Generating Units and Non-Electric Generating Boilers, is substantially consistent with EPA's model rule. Missouri sources are allowed to participate in the interstate NOx allowance trading program that EPA will administer for the participating states. Under the NOx budget trading program, Missouri allocates NOx allowances to the electric generating units and non-electric generating boilers that are affected by these requirements. The NOx trading program generally applies to fossil fuel fired electric generating units with a nameplate capacity equal to or greater than 25 MW that sell any amount of electricity as well as to non-electric generating units that have a heat input capacity equal to or greater than 250 MMBTU per hour of heat input. Each NOx allowance permits a unit to emit one ton of NOx during the seasonal control period. NOx allowances may be bought or sold. Missouri imposes an emission cap as an enforceable mechanism to assure that collectively all large electric generating units, including new or modified units, will not exceed the total NOx emissions cap of 13,400 tons in 2007. New and modified sources must acquire allowances through regional trade program to cover their seasonal emissions. The total allowances issued by the State to all sources in the program in any given control season will not exceed the total NOx emissions cap in 2007 for such sources.

Missouri has included in the trading program an energy efficiency and renewable fuels set-aside of 1 percent of the emissions cap, 134 tons per ozone season. This set-aside is available on a first come first serve basis for entities wishing to implement energy efficiency and renewable fuels projects. If this set-aside is not utilized during any year, the NOx credits are redistributed to the electric generating units based on percentage of heat input during the 1995 ozone season.

Portland Cement Kilns

Again, Missouri started with EPA's model rule in the development of 10 CSR 10-6.380 Control of NOx Emissions from Portland Cement Kilns. Missouri has modified this regulation in several ways. First, Missouri elected to establish emission limits that reflected the greater of EPA's AP-42 emission factor or EPA's Alternative Control Technologies emission factor for an emission rate. EPA had proposed to use an average of these rates in their model rule. Missouri believes that the greater of the two factors is more representative of the industrial class in Missouri than the average of the two factors, which in themselves are an industrial average. Missouri is able to demonstrate an emission reduction of 30 percent across the industrial class, assuming that the four kilns will either install the applicable control technology or apply for alternative control strategies outlined in Missouri's rulemaking that will achieve the minimum 30 percent NOx emissions control. It is important to note that EPA's budget calculation for this class did not meet 30 percent reduction, they achieved only 26 percent reduction in NOx, while Missouri is assuming 30 percent reduction in NOx for 2007.

Large Stationary Internal Combustion Engines

Missouri is proposing rule 10 CSR 10-6.390 Control of NOx Emissions from Large Internal Combustion Engines, which is based on EPA's model rulemaking. Missouri does not believe

that there are any affected sources with this rulemaking and has not taken any NOx emission reduction credits related to this source category.

Budget Demonstration

As part of EPA's April 21, 2005, Phase II NOx SIP Call rulemaking, EPA established a NOx emissions budget for the eastern one-third of Missouri of 61,403 tons of NOx per ozone season in the year 2007. Table 3 is a summary of Missouri's 2007 emission budget. As you can see, Missouri is projecting NOx emissions of 60,040 ton in the 2007 ozone season. These projections are based on NOx emissions reductions achieved through three rulemakings detailed in the control measures section of this document. The complete point source emission inventory is available electronically upon request from Missouri's Air Pollution Control Program. The inventory has not been included as an attachment to this document due to the size.

Administrative Requirements

Legal Authority

The department was granted legal authority to develop and implement regulations regarding air pollution under Chapter 643 of the Revised Statutes of Missouri. A copy of Chapter 643 is attached to this SIP as Appendix A.

Public Hearing Notice and Certification

The department is mandated to announce a public hearing, 30 days prior to holding such hearing. Attached in Appendix B is the public hearing notice along with certification of public notice.

Comments and Responses

Attached in Appendix C are the department's responses to comments received at public hearing on this SIP. The department is required to respond to all comments received by either amending the SIP or explanation of reasoning for not making an amendment.

MACC Adoption Certification

Attached in Appendix D is the MACC adoption certification to demonstrate approval by the Commission

List of Appendixes

- Appendix A: Legal Authority**
- Appendix B: Public Hearing Notice and Certification**
- Appendix C: Comments and Responses**
- Appendix D: Missouri Air Conservation Commission Adoption Certification**
- Appendix E: Development of Emission Budget Inventories for Regional Transport NO_x SIP Call Technical Amendments Version**
- Appendix F: Emission Inventory Reporting Requirements 40 CFR Part 51.122**
- Appendix G: Portland Cement Kiln Data**
- Appendix H: 10 CSR 10-6.360 Control of NO_x Emissions from Electric Generating Units and Non-electric Generating Boilers**
- Appendix I: 10 CSR 10-6.380 Control of NO_x Emissions from Portland Cement Kilns**
- Appendix J: 10 CSR 10-6.390 Control of NO_x Emissions from Large Internal Combustion Engines**
- Appendix K: Ozone Transport Assessment Group – Executive Summary**

Appendix A

Legal Authority

Missouri Revised Statutes

Chapter 643 Air Conservation

August 28, 2004

Short title.

643.010. This chapter shall be known and may be cited as the "Missouri Air Conservation Law".

(L. 1965 p. 335 § 1)

*Transferred 1986; formerly 203.010

Definitions.

643.020. When used in this chapter and in standards, rules and regulations promulgated under authority of this chapter, the following words and phrases mean:

- (1) "AHERA", Asbestos Hazard Emergency Response Act of 1986 (P.L. 99-519);
- (2) "Abatement project designer", an individual who designs or plans AHERA asbestos abatement;
- (3) "Air cleaning device", any method, process, or equipment which removes, reduces, or renders less obnoxious air contaminants discharged into ambient air;
- (4) "Air contaminant", any particulate matter or any gas or vapor or any combination thereof;
- (5) "Air contaminant source", any and all sources of air contaminants whether privately or publicly owned or operated;
- (6) "Air pollution", the presence in the ambient air of one or more air contaminants in quantities, of characteristics and of a duration which directly and proximately cause or contribute to injury to human, plant, or animal life or health or to property or which unreasonably interferes with the enjoyment of life or use of property;
- (7) "Ambient air", all space outside of buildings, stacks, or exterior ducts;
- (8) "Area of the state", any geographical area designated by the commission;
- (9) "Asbestos", the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite;
- (10) "Asbestos abatement", the encapsulation, enclosure or removal of asbestos containing materials in or from a building or air contaminant source, or preparation of friable asbestos containing material prior to demolition;
- (11) "Asbestos abatement contractor", any person who by agreement, contractual or otherwise, conducts asbestos abatement projects at a location other than his own place of business;
- (12) "Asbestos abatement projects", an activity undertaken to encapsulate, enclose or remove ten square feet or sixteen linear feet or more of friable asbestos containing materials from buildings and other air contaminant sources, or to demolish buildings and other air contaminant sources containing ten square feet or sixteen linear feet or more;
- (13) "Asbestos abatement supervisor", an individual who directs, controls, or supervises others in asbestos abatement projects;
- (14) "Asbestos abatement worker", an individual who engages in asbestos abatement projects;

- (15) "Asbestos air sampling professional", an individual who by qualifications and experience is proficient in asbestos abatement air monitoring. The individual shall conduct, oversee or be responsible for air monitoring of asbestos abatement projects before, during and after the project has been completed;
- (16) "Asbestos air sampling technician", an individual who has been trained by an air sampling professional to do air monitoring. Such individual conducts air monitoring of an asbestos abatement project before, during and after the project has been completed;
- (17) "Asbestos containing material", any material or product which contains more than one percent asbestos, by weight;
- (18) "Class A source", either a class A1, A2 or A3 source as defined in this section;
- (19) "Class A1 source", any air contaminant source with the potential to emit equal to or greater than one hundred tons per year of an air contaminant;
- (20) "Class A2 source", any air contaminant source, which is not a class A1 source, and with the potential, air cleaning devices not considered, to emit equal to or greater than one hundred tons per year of an air contaminant;
- (21) "Class A3 source", any air contaminant source which emits or has the potential to emit, ten tons per year or more of any hazardous air pollutant or twenty-five tons of any combination of hazardous air pollutants, or as defined pursuant to section 112 of the federal Clean Air Act, as amended, 42 U.S.C. 7412;
- (22) "Class B source", any air contaminant source with the potential, air cleaning devices not considered, to emit equal to or greater than the de minimis amounts of an air contaminant established by the commission, but not a class A source;
- (23) "Commission", the air conservation commission of the state of Missouri created in section 643.040;
- (24) "Competent person", as defined in the United States Occupational Safety and Health Administration's (OSHA) standard 29 CFR 1926.58 (b). Such person shall also be a certified asbestos abatement supervisor;
- (25) "Conference, conciliation and persuasion", a process of verbal or written communications consisting of meetings, reports, correspondence or telephone conferences between authorized representatives of the department and the alleged violator. The process shall, at a minimum, consist of one offer to meet with the alleged violator tendered by the department. During any such meeting, the department and the alleged violator shall negotiate in good faith to eliminate the alleged violation and shall attempt to agree upon a plan to achieve compliance;
- (26) "De minimis source", any air contaminant source with a potential to emit an air contaminant, air cleaning devices not considered, less than that established by the commission as de minimis for the air contaminant;
- (27) "Department", the department of natural resources of the state of Missouri;
- (28) "Director", the director of the department of natural resources;
- (29) "Emergency asbestos project", an asbestos project that must be undertaken immediately to prevent imminent, severe, human exposure or to restore essential facility operation;
- (30) "Emission", the discharge or release into the atmosphere of one or more air contaminants;
- (31) "Emission control regulations", limitations on the emission of air contaminants into the ambient air;
- (32) "Friable asbestos containing material", any asbestos containing material which is applied to ceilings, walls, structural members, piping, ductwork or any other part of a building or other air contaminant sources and which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure;
- (33) "Inspector", an individual, under AHERA, who collects and assimilates information used to determine whether asbestos containing material is present in a building or other air contaminant sources;
- (34) "Management planner", an individual, under AHERA, who devises and writes plans for asbestos abatement;
- (35) "Minor violation", a violation which possesses a small potential to harm the environment or human health or cause pollution, was not knowingly committed, and is not defined by the United States Environmental Protection Agency as other than minor;
- (36) "Nonattainment area", any area designated by the governor as a "nonattainment area" as defined in the federal Clean Air Act, as amended,

42 U.S.C. 7501;

(37) "Person", any individual, partnership, copartnership, firm, company, or public or private corporation, association, joint stock company, trust, estate, political subdivision, or any agency, board, department, or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties;

(38) "Small business", for the purpose of sections 643.010 to 643.190, a small business shall include any business regulated under this chapter, which is not a class A source and which employs less than one hundred people and emits less than fifty tons of any regulated pollutant per year and less than seventy-five tons of all regulated pollutants or as otherwise defined by the commission by rule.

(L. 1965 p. 335 § 2, A.L. 1972 H.B. 1184, A.L. 1988 H.B. 1187, A.L. 1989 H.B. 77, et al., A.L. 1992 S.B. 544, A.L. 1993 S.B. 80, et al., A.L. 1994 S.B. 590)

*Transferred 1986; formerly 203.020

Intent of law--commission to control air pollution.

643.030. The discharge into the ambient air of air contaminants so as to cause or contribute to air pollution is contrary to the public policy of Missouri and in violation of this chapter. It is the intent and purpose of this chapter to maintain purity of the air resources of the state to protect the health, general welfare and physical property of the people, maximum employment and the full industrial development of the state. The commission shall seek the accomplishment of this objective through the prevention, abatement and control of air pollution by all practical and economically feasible methods.

(L. 1965 p. 335 § 3)

*Transferred 1986; formerly 203.030

Air conservation commission created--members--terms--expenses --meetings.

643.040. 1. There is created hereby an air pollution control agency to be known as the "Air Conservation Commission of the State of Missouri", whose domicile for the purposes of sections 643.010 to 643.190 is the department of natural resources of the state of Missouri. The commission shall consist of seven members appointed by the governor, with the advice and consent of the senate. No more than four of the members shall belong to the same political party and no two members shall be a resident of and domiciled in the same senatorial district. At the first meeting of the commission and at yearly intervals thereafter, the members shall select from among themselves a chairman and a vice chairman.

2. All members shall be representative of the general interest of the public and shall have an interest in and knowledge of air conservation and the effects and control of air contaminants. At least three of such members shall represent agricultural, industrial and labor interests, respectively. The governor shall not appoint any other person who has a substantial interest as defined in section 105.450, RSMo, in any business entity regulated under this chapter or any business entity which would be regulated under this chapter if located in Missouri. The commission shall establish rules of procedure which specify when members shall exempt themselves from participating in discussions and from voting on issues before the commission due to potential conflict of interest.

3. The members' terms of office shall be four years and until their successors are selected and qualified, except that the terms of those first appointed shall be staggered to expire at intervals of one, two and three years after the date of appointment as designated by the governor at the time of appointment. There is no limitation of the number of terms any appointed member may serve. If a vacancy occurs the governor may appoint a member for the remaining portion of the unexpired term created by the vacancy. The governor may remove any appointed member for cause. The members of the commission shall be reimbursed for travel and other expenses actually and necessarily incurred in the performance of their duties.

4. The commission shall hold at least nine regular meetings each year and such additional regular meetings as the chairman deems desirable at a place and time to be fixed by the chairman. Special meetings may be called by three members of the commission upon delivery of written notice to each member of the commission. Reasonable written notice of all meetings shall be given to all members of the commission. Four members of the commission shall constitute a quorum. All powers and duties conferred upon members of the commission shall be exercised personally by the members and not by alternates or representatives. All actions of the commission shall be taken at meetings open to the public, except as provided in chapter 610, RSMo. Any member absent from four regular commission meetings per calendar year for any cause whatsoever shall be deemed to have resigned and the vacancy shall be filled immediately in accordance with subsection 1 and subsection 3 of this section.

(L. 1965 p. 335 § 4, A.L. 1972 H.B. 1184, A.L. 1992 S.B. 544, A.L. 1994 S.B. 590, A.L. 1998 H.B. 1601, et al.)

*Transferred 1986; formerly 203.040

Powers and duties of commission--rules, procedure.

643.050. 1. In addition to any other powers vested in it by law the commission shall have the following powers:

- (1) Adopt, promulgate, amend and repeal rules and regulations consistent with the general intent and purposes of sections 643.010 to 643.190, chapter 536, RSMo, and Titles V and VI of the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq., including but not limited to:
 - (a) Regulation of use of equipment known to be a source of air contamination;
 - (b) Establishment of maximum quantities of air contaminants that may be emitted from any air contaminant source; and
 - (c) Regulations necessary to enforce the provisions of Title VI of the Clean Air Act, as amended, 42 U.S.C. 7671, et seq., regarding any Class I or Class II substances as defined therein;
- (2) After holding public hearings in accordance with section 643.070, establish areas of the state and prescribe air quality standards for such areas giving due recognition to variations, if any, in the characteristics of different areas of the state which may be deemed by the commission to be relevant;
- (3) (a) To require persons engaged in operations which result in air pollution to monitor or test emissions and to file reports containing information relating to rate, period of emission and composition of effluent;
- (b) Require submission to the director for approval of plans and specifications for any article, machine, equipment, device, or other contrivance specified by regulation the use of which may cause or control the issuance of air contaminants; but any person responsible for complying with the standards established under sections 643.010 to 643.190 shall determine, unless found by the director to be inadequate, the means, methods, processes, equipment and operation to meet the established standards;
- (4) Hold hearings upon appeals from orders of the director or from any other actions or determinations of the director hereunder for which provision is made for appeal, and in connection therewith, issue subpoenas requiring the attendance of witnesses and the production of evidence reasonably relating to the hearing;
- (5) Enter such order or determination as may be necessary to effectuate the purposes of sections 643.010 to 643.190. In making its orders and determinations hereunder, the commission shall exercise a sound discretion in weighing the equities involved and the advantages and disadvantages to the person involved and to those affected by air contaminants emitted by such person as set out in section 643.030. If any small business, as defined by section 643.020, requests information on what would constitute compliance with the requirements of sections 643.010 to 643.190 or any order or determination of the department or commission, the department shall respond with written criteria to inform the small business of the actions necessary for compliance. No enforcement action shall be undertaken by the department or commission until the small business has had a period of time, negotiated with the department, to achieve compliance;
- (6) Cause to be instituted in a court of competent jurisdiction legal proceedings to compel compliance with any final order or determination entered by the commission or the director;
- (7) Settle or compromise in its discretion, as it may deem advantageous to the state, any suit for recovery of any penalty or for compelling compliance with the provisions of any rule;
- (8) Develop such facts and make such investigations as are consistent with the purposes of sections 643.010 to 643.190, and, in connection therewith, to enter or authorize any representative of the department to enter at all reasonable times and upon reasonable notice in or upon any private or public property for the purpose of inspecting or investigating any condition which the commission or director shall have probable cause to believe to be an air contaminant source. The results of any such investigation shall be reduced to writing, and a copy thereof shall be furnished to the owner or operator of the property. No person shall refuse entry or access, requested for purposes of inspection under this provision, to an authorized representative of the department who presents appropriate credentials, nor obstruct or hamper the representative in carrying out the inspection. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, shall be issued by any judge having jurisdiction to any such representative for the purpose of enabling him to make such inspection;
- (9) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise, with any educational institution, experiment station, or any board, department, or other agency of any political subdivision or state or the federal government;
- (10) Classify and identify air contaminants; and
- (11) Hold public hearings as required by sections 643.010 to 643.190.

2. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

3. The commission shall have the following duties with respect to the prevention, abatement and control of air pollution:

- (1) Prepare and develop a general comprehensive plan for the prevention, abatement and control of air pollution;
- (2) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of sections 643.010 to 643.190;
- (3) Encourage political subdivisions to handle air pollution problems within their respective jurisdictions to the extent possible and practicable and provide assistance to political subdivisions;
- (4) Encourage and conduct studies, investigations and research;
- (5) Collect and disseminate information and conduct education and training programs;
- (6) Advise, consult and cooperate with other agencies of the state, political subdivisions, industries, other states and the federal government, and with interested persons or groups;
- (7) Represent the state of Missouri in all matters pertaining to interstate air pollution including the negotiations of interstate compacts or agreements.

4. Nothing contained in sections 643.010 to 643.190 shall be deemed to grant to the commission or department any jurisdiction or authority with respect to air pollution existing solely within commercial and industrial plants, works, or shops or to affect any aspect of employer-employee relationships as to health and safety hazards.

5. Any information relating to secret processes or methods of manufacture or production discovered through any communication required under this section shall be kept confidential.

(L. 1965 p. 335 § 5, A.L. 1972 H.B. 1184, A.L. 1992 S.B. 544, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

*Transferred 1986; formerly 203.050

Commission may adopt rules for compliance with federal law --suspension, reinstatement--exemption, limitations.

643.055. 1. Other provisions of law notwithstanding, the Missouri air conservation commission shall have the authority to promulgate rules and regulations, pursuant to chapter 536, RSMo, to establish standards and guidelines to ensure that the state of Missouri is in compliance with the provisions of the federal Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.). The standards and guidelines so established shall not be any stricter than those required under the provisions of the federal Clean Air Act, as amended; nor shall those standards and guidelines be enforced in any area of the state prior to the time required by the federal Clean Air Act, as amended. The restrictions of this section shall not apply to the parts of a state implementation plan developed by the commission to bring a nonattainment area into compliance and to maintain compliance when needed to have a United States Environmental Protection Agency approved state implementation plan. The determination of which parts of a state implementation plan are not subject to the restrictions of this section shall be based upon specific findings of fact by the air conservation commission as to the rules, regulations and criteria that are needed to have a United States Environmental Protection Agency approved plan.

2. The Missouri air conservation commission shall also have the authority to grant exceptions and variances from the rules set under subsection 1 of this section when the person applying for the exception or variance can show that compliance with such rules:

- (1) Would cause economic hardship; or
- (2) Is physically impossible; or
- (3) Is more detrimental to the environment than the variance would be; or
- (4) Is impractical or of insignificant value under the existing conditions.

(L. 1979 S.B. 21 § 1, A.L. 1992 S.B. 544, A.L. 1994 S.B. 590)

*Transferred 1986; formerly 203.055

Powers and duties of director.

643.060. In addition to any other powers vested by law, the director shall have the following powers and duties:

- (1) Retain, employ, provide for, and compensate, within appropriations available therefor, such consultants, assistants, deputies, clerks, and other employees on a full- or part-time basis as may be necessary to carry out the provisions of sections 643.010 to 643.190 and prescribe the times at which they shall be appointed and their powers and duties;
- (2) Accept, receive and administer grants or other funds or gifts from public and private agencies including the federal government for the purpose of carrying out any of the functions of sections 643.010 to 643.190. The director shall apply for all available grants and funds authorized and distributed pursuant to Title XI of the federal Clean Air Act, as amended, 29 U.S.C. 1662e, for training, assistance and payments to eligible individuals. The director shall report annually to the governor and the general assembly, the amount of revenue received under Title XI of the Clean Air Act and the distribution of such funds to eligible persons. Funds received by the director pursuant to this section shall be deposited with the state treasurer and held and disbursed by him in accordance with the appropriations of the general assembly. The director is authorized to enter into contracts as he may deem necessary for carrying out the provisions of sections 643.010 to 643.190;
- (3) Budget and receive duly appropriated moneys for expenditures to carry out the provisions and purposes of sections 643.010 to 643.190;
- (4) Administer and enforce sections 643.010 to 643.190, investigate complaints, issue orders and take all actions necessary to implement sections 643.010 to 643.190;
- (5) Receive and act upon reports, plans, specifications and applications submitted under rules promulgated by the commission. Any person aggrieved by any action of the director under this provision shall be entitled to a hearing before the commission as provided in section 643.080. The commission may sustain, reverse, or modify any action of the director taken under this provision, or make such other order as the commission shall deem appropriate under the circumstances.

(L. 1965 p. 335 § 6, A.L. 1972 H.B. 1184, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.060

Commission to adopt rules, notice--public hearing.

643.070. 1. The commission shall adopt rules pursuant to chapter 536, RSMo. The commission shall notify any air pollution control agency with a certificate of authority which may be affected by the rule and any person who has previously requested notice when the proposed rulemaking is submitted to the secretary of state for publication in the Missouri Register. In addition, any interested persons, whether or not heard, may submit, within seven days subsequent to the hearings, a written statement of their views. The commission may solicit the views, in writing, of persons who may be affected by, or interested in, proposed rules and regulations, or standards. Any person heard or represented at the hearing or making written request for notice shall be given written notice of the action of the commission with respect to the subject thereof.

2. Rules shall be approved after public hearing and shall be approved in writing by at least four members of the commission.

3. Any rule or any amendment or repeal thereof which is adopted by the commission may differ in its terms and provisions for particular types and conditions of air pollution or air contamination, for particular air contaminant sources, and for particular areas of the state.

(L. 1965 p. 335 § 7, A.L. 1972 H.B. 1184, A.L. 1992 S.B. 544, A.L. 1993 S.B. 52)

*Transferred 1986; formerly 203.070

Procedure for submission of applications, fee.

643.073. 1. The commission shall establish, by rule, a procedure for the orderly submission of applications for an operating permit by those regulated air contaminant sources in operation on August 28, 1992, and procedures for the issuance of operating permits. Any person who operates an air contaminant source on or after August 28, 1992, shall submit to the department, with the application, payment of a one hundred-dollar fee with the request for the approval of an operating permit.

2. Any person who wishes to construct or modify and operate any regulated air contaminant source shall submit an application to the department. The commission shall establish, by rule, procedures for the orderly submission of applications for those persons that wish to construct or modify and operate any regulated air contaminant source and procedures for the issuance of a permit to construct or modify and operate. The department shall review applications within the time period established in sections 643.075 and 643.078 or under section 502 of the federal Clean Air Act, as amended, 42 U.S.C. 7661, as appropriate, unless an extension is requested by the applicant and approved by the director. Each applicant must obtain both a construction permit and an operating permit but the department shall establish a unified review, hearing and approval process. The holder of a valid operating permit shall have operational flexibility to make changes to any air contaminant source under the provisions of subsection 14 of section 643.078 without submitting an application for an operating permit under this section.

(L. 1992 S.B. 544)

Construction without permit prohibited--denial, appeal, procedure --fee, exemption--natural resources protection fund, air pollution permit fee subaccount--city or county permit granted, effect.

643.075. 1. It shall be unlawful for any person to commence construction of any air contaminant source in this state, without a permit therefor, if such source is of a class fixed by regulation of the commission which requires a permit therefor.

2. Every source required to obtain a construction permit shall make application therefor to the department and shall submit therewith such plans and specifications as prescribed by rule. The director shall promptly investigate each application and if he determines that the source meets and will meet the requirements of sections 643.010 to 643.190 and the rules promulgated pursuant thereto, he shall issue a construction permit with such conditions as he deems necessary to ensure that the source will meet the requirements of sections 643.010 to 643.190 and the rules. An application submitted for the construction or modification and operation of any regulated air contaminant source shall receive a unified construction and operating permit review process under section 643.078, unless the applicant requests in writing that the construction and operating permits be reviewed separately. If the director determines that the source does not meet or will not meet the requirements of sections 643.010 to 643.190 and the rules promulgated pursuant thereto, he shall deny the construction permit.

3. Before issuing a construction permit to build or modify an air contaminant source the director shall determine if the ambient air quality standards in the vicinity of the source are being exceeded and shall determine the impact on the ambient air quality standards from the source. The director, in order to effectuate the purposes of sections 643.010 to 643.190, may deny a construction permit if the source will appreciably affect the air quality or the air quality standards are being substantially exceeded.

4. The director may require the applicant as a condition to the issuance of the construction permit to provide and maintain such facilities or to conduct such tests as are necessary to determine the nature, extent, quantity or degree of air contaminants discharged into the ambient air from the proposed source.

5. The director shall act within thirty days after a request for approval of an application for a construction permit. The director shall render a decision to approve or deny a construction permit within ninety days of receipt of a complete application for a class B source and within one hundred eighty-four days of receipt of a complete application for a class A source. The director shall promptly notify the applicant in writing of his action and if the construction permit is denied state the reasons therefor.

6. Any aggrieved person may appeal any permit decision made under this section, including failure to render a decision within the time period established in this section. A notice of appeal shall be filed with the commission within thirty days of the director's action or within thirty days from the date by which the decision should have been rendered if the director has failed to act.

7. (1) There shall be a one hundred-dollar filing fee payable to the state of Missouri with each application before a construction permit shall be issued. No manufacturing or processing plant or operating location or other air contaminant source shall be required to pay more than one filing fee with a construction permit application. The provisions of this section shall not apply nor require the issuance of a permit wherein the proposed construction is that of a private residence.

(2) Upon completion of the department's evaluation of the application, but before receiving a construction permit, the applicant shall reimburse the department for all reasonable costs incurred by the department whether or not a construction permit is issued by the department or withdrawn by the applicant. If the department fails to approve or deny a construction permit within the time period specified in this section, the applicant shall not be required to reimburse the department for the review of the construction permit application. The commission shall, by rule, set the hourly charge, not to exceed the actual cost thereof and not to exceed fifty dollars per hour, for review of each construction permit application. The commission may exempt any person from payment of the hourly fees under this subdivision, or may reduce such fees, upon an appeal filed with the commission by such person stating that the fee will create an unreasonable economic hardship upon such person. The commission may conduct a closed meeting and have closed records, as defined in section 610.010, RSMo, for the purpose of gathering information from the person filing an appeal for the exemption. Information obtained in this meeting may be held confidential by the commission upon the request of the person filing the appeal for exemption. If the fees or any portion of the fees imposed by this section are not paid within ninety days from the date of billing there shall be imposed interest upon the unpaid amount at the rate of ten percent per annum from the date of billing until payment is actually made. A construction permit application for a portable facility may include any site at which the portable facility is expected to be used; however, a separate site permit application shall be required when the portable facility is used or expected to be used at any site which is not included in a previously approved construction permit application. Upon receipt of the application,

the applicant shall be notified by the department of hourly fees and requirements put forth in this subdivision.

(3) Applicants who withdraw their application before the department completes its evaluation shall reimburse the department for costs incurred in the evaluation.

(4) All moneys received pursuant to this section and section 643.073 and any other moneys so designated shall be placed in the state treasury and credited to the natural resources protection fund--air pollution permit fee subaccount, created in section 640.220, RSMo, and shall be expended for the administration of this section and sections 643.073 and 643.078 and for no other purpose, and shall be used to supplement state general revenue and federal funds appropriated to the department. After appropriation, the moneys received pursuant to this section and in such fund subaccount shall be expended for the administration of this section and for no other purpose. Any unexpended balance in such fund subaccount at the end of any appropriation period shall not be transferred to the general revenue fund of the state treasury and shall be exempt from the provisions of section 33.080, RSMo. Any interest received on such deposits shall be credited to the fund subaccount.

8. Any person who obtains a valid permit from a city or county pursuant to the authority granted in section 643.140 shall be deemed to have met the requirements of this section and shall not be liable to the department for construction permit fees imposed pursuant to subsection 7 of this section.

(L. 1972 H.B. 1184, A.L. 1988 H.B. 1187, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.075

Sections not to apply to locomotives, exception.

643.076. The provisions of sections 643.073, 643.075, 643.078 and 643.079 shall not apply to locomotives or engines used in locomotives engaged in interstate commerce unless otherwise required under the provisions of the Federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

(L. 1992 S.B. 544 § 1)

Operating and construction permits, transferability.

643.077. An operating permit or associated construction permit authorized pursuant to section 643.073 shall be applicable to an operating source and such permit or permits shall transfer to any new owner of an operating source with the change of ownership of said operating source.

(L. 1992 S.B. 544 § 3)

Operation without permit prohibited--single permit for multiple sources--information to be submitted, time period--validation of permit, terms and conditions--time period--director shall enforce federal standards--appeal--city or county permit granted, effect.

643.078. 1. It shall be unlawful for any person to operate any regulated air contaminant source after August 28, 1992, without an operating permit except as otherwise provided in sections 643.010 to 643.190.

2. At the option of the permit applicant, a single operating permit shall be issued for a facility having multiple air contaminant sources located on one or more contiguous tracts of land, excluding public roads, highways and railroads, under the control of or owned by the permit holder and operated as a single enterprise.

3. Any person who wishes to construct or modify and operate any regulated air contaminant source shall submit an application to the department for the unified review of a construction permit application under section 643.075 and an operating permit application under this section, unless the applicant requests in writing that the construction and operating permit applications be reviewed separately. The director shall complete any unified review within one hundred and eighty days of receipt of the request for a class B source. For a class A source, the unified review shall be completed within the time period established in section 502 of the federal Clean Air Act, as amended, 42 U.S.C. 7661.

4. As soon as the review process is completed for the construction and operating permits and, if the applicant complies with all applicable requirements of sections 643.010 to 643.190 and all rules adopted thereunder, the construction permit shall be issued to the applicant. The operating permit shall be retained by the department until validated.

5. Within one hundred and eighty days of commencing operations, the holder of a construction permit shall submit to the director such information as is necessary to demonstrate compliance with the provisions of sections 643.010 to 643.190 and the terms and conditions of the construction permit. The operating permit retained by the department shall be validated and forwarded to the applicant if the applicant is in compliance with the terms and conditions of the construction permit and the terms and conditions of the operating permit. The holder of a construction permit may request a waiver of the one hundred and eighty day time period and the director may grant such request by mutual agreement.

6. If the director determines that an air contaminant source does not meet the terms and conditions of the construction permit and that the operation of the source will result in emissions which exceed the limits established in the construction permit, he shall not validate the operating permit. If the source corrects the deficiency, the director shall then validate the operating permit. If the source is unable to correct the deficiency, then the director and the applicant may, by mutual agreement, add such terms and conditions to the operating permit which are deemed appropriate, so long as the emissions from the air contaminant source do not exceed the limits established in the construction permit, and the director shall validate the operating permit. The director may add terms and conditions to the operating permit which allow the source to exceed the emission limits established in the construction permit. In such a case, the director shall notify the affected public and the commission shall, upon request by any affected person, hold a public hearing upon the revised operating permit application.

7. Except as provided in subsection 8* of this section, an operating permit shall be valid for five years from the date of issuance or validation, whichever is later, unless otherwise revoked or terminated pursuant to sections 643.010 to 643.190.

8. An applicant for a construction permit for an air contaminant source with valid operating permit may request that the air contaminant source be issued a new five-year operating permit. The operating permit would be issued in the manner and under the conditions provided in sections 643.010 to 643.190 and would supersede any existing operating permit for the source.

9. The director shall take action within thirty days after a request for validation of the operating permit and shall render a decision within one hundred twenty days of receipt of a request for issuance of an operating permit for a class B source. The director shall render a decision within the time period established in section 502 of the federal Clean Air Act, as amended, 42 U.S.C. 7661, for a class A source. Any affected person may appeal any permit decision, including failure to render a decision within the time period established in this section, to the commission.

10. The director may suspend, revoke or modify an operating permit for cause.

11. The director shall not approve an operating permit if he receives an objection to approval of the permit from the United States Environmental Protection Agency within the time period specified under Title V of the Clean Air Act, as amended, 42 U.S.C. 7661, et seq.

12. The director shall enforce all applicable federal rules, standards and requirements issued under the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq., and shall incorporate such applicable standards and any limitations established pursuant to Title III into operating permits as required under Title V of the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq.

13. Applicable standards promulgated by the commission by rule shall be incorporated by the director into the operating permit of any air contaminant source which has, on the effective date of the rule, at least three years remaining before renewal of its operating permit. If less than three years remain before renewal of the source's operating permit, such applicable standards shall be incorporated into the permit unless the permit contains a shield from such new requirements consistent with Title V of the federal Clean Air Act, as amended, 42 U.S.C. 7661, et seq.

14. The holder of a valid operating permit shall have operational flexibility to make changes to any air contaminant source, if the changes will not result in air contaminant emissions in excess of those established in the operating permit or result in the emissions of any air contaminant not previously emitted without obtaining a modification of the operating permit provided such changes are consistent with Section 502(b)(10) of the federal Clean Air Act, as amended, 42 U.S.C. 7661.

15. An air contaminant source with a valid operating permit which submits a complete application for a permit renewal at least six months prior to the expiration of the permit shall be deemed to have a valid operating permit until the director acts upon its permit application. The director shall promptly notify the applicant in writing of his action on the application and if the operating permit is not issued state the reasons therefor.

16. The applicant may appeal to the commission if an operating permit is not issued or may appeal any condition, suspension, modification or revocation of any permit by filing notice of appeal with the commission within thirty days of the notice of the director's response to the request for issuance of the operating permit.

17. Any person who obtains a valid operating permit from a city or county pursuant to the authority granted in section 643.140 shall be deemed to have met the requirements of this section.

(L. 1992 S.B. 544)

*"Subsection 7" appears in original rolls, but apparently the reference should be to subsection 8.

Fees, amount--deposit of moneys, where, subaccount to be maintained --civil action for failure to remit fees, effect upon permit --agencies, determination of fees.

643.079. 1. Any air contaminant source required to obtain a permit issued under sections 643.010 to 643.190 shall pay annually beginning April 1, 1993, a fee as provided herein. For the first year the fee shall be twenty-five dollars per ton of each regulated air contaminant emitted. Thereafter, the fee shall be annually set by the commission by rule and shall be at least twenty-five dollars per ton of regulated air contaminant emitted but not more than forty dollars per ton of regulated air contaminant emitted in the previous calendar year. The fee shall be set at an amount consistent with the need to fund the reasonable cost of administering sections 643.010 to 643.190, taking into account other moneys received pursuant to sections 643.010 to 643.190. For the purpose of determining the amount of air contaminant emissions on which the fees authorized under this section are assessed, a facility shall be considered one source under the definition of subsection 2 of section 643.078, except that a facility with multiple operating permits shall pay the emission fees authorized under this section separately for air contaminants emitted under each individual permit.

2. A source which produces charcoal from wood shall pay an annual emission fee under this subsection in lieu of the fee established in subsection 1 of this section. The fee shall be based upon a maximum fee of twenty-five dollars per ton and applied upon each ton of regulated air contaminant emitted for the first four thousand tons of each contaminant emitted in the amount established by the commission pursuant to subsection 1 of this section, reduced according to the following schedule:

(1) For fees payable under this subsection in the years 1993 and 1994, the fee shall be reduced by one hundred percent;

(2) For fees payable under this subsection in the years 1995, 1996 and 1997, the fee shall be reduced by eighty percent;

(3) For fees payable under this subsection in the years 1998, 1999 and 2000, the fee shall be reduced by sixty percent.

3. The fees imposed in subsection 2 of this section shall not be imposed or collected after the year 2000 unless the general assembly reimposes the fee.

4. Each air contaminant source with a permit issued under sections 643.010 to 643.190 shall pay the fee for the first four thousand tons of each regulated air contaminant emitted each year but no air contaminant source shall pay fees on total emissions of regulated air contaminants in excess of twelve thousand tons in any calendar year. A permitted air contaminant source which emitted less than one ton of all regulated pollutants shall pay a fee equal to the amount per ton set by the commission. An air contaminant source which pays emission fees to a holder of a certificate of authority issued pursuant to section 643.140 may deduct such fees from any amount due under this section. The fees imposed in this section shall not be applied to carbon oxide emissions. The fees imposed in subsection 1 and this subsection shall not be applied to sulfur dioxide emissions from any Phase I affected unit subject to the requirements of Title IV, section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, et seq., any sooner than January 1, 2000. The fees imposed on emissions from Phase I affected units shall be consistent with and shall not exceed the provisions of the federal Clean Air Act, as amended, and the regulations promulgated thereunder. Any such fee on emissions from any Phase I affected unit shall be reduced by the amount of the service fee paid by that Phase I affected unit pursuant to subsection 8 of this section in that year. Any fees that may be imposed on Phase I sources shall follow the procedures set forth in subsection 1 and this subsection and shall not be applied retroactively.

5. Moneys collected under this section shall be transmitted to the director of revenue for deposit in appropriate subaccounts of the natural resources protection fund created in section 640.220, RSMo. A subaccount shall be maintained for fees paid by air contaminant sources which are required to be permitted under Title V of the federal Clean Air Act, as amended, 42 U.S.C. Section 7661, et seq., and used, upon appropriation, to fund activities by the department to implement the operating permits program authorized by Title V of the federal Clean Air Act, as amended. Another subaccount shall be maintained for fees paid by air contaminant sources which are not required to be permitted under Title V of the federal Clean Air Act as amended, and used, upon appropriation, to fund other air pollution control program activities. Another subaccount shall be maintained for service fees paid under subsection 8 of this section by Phase I affected units which are subject to the requirements of Title IV, section 404, of the federal Clean Air Act Amendments of 1990, as amended, 42 U.S.C. 7651, and used, upon appropriation, to fund air pollution control program activities. The provisions of section 33.080, RSMo, to the contrary notwithstanding, moneys in the fund shall not revert to general revenue at the end of each biennium. Interest earned by moneys in the subaccounts shall be retained in the subaccounts. The minimum and maximum limits for per ton fees established under subsection 1 of this section may be adjusted annually, consistent with the need to fund the reasonable costs of the program, by the same percentage as the percentage change in the general price level as measured by the Consumer Price Index for all Urban Consumers for the United States, or its successor index, as defined and officially recorded by the United States Department of Labor or its successor agency. The first adjustment shall apply to moneys payable on April 1, 1994, and shall be based upon the general price level for the twelve month period ending on August thirty-first of the previous calendar year.

6. The department may initiate a civil action in circuit court against any air contaminant source which has not remitted the appropriate fees within thirty days. In any judgment against the source, the department shall be awarded interest at a rate determined pursuant to section 408.030, RSMo, and reasonable attorney's fees. In any judgment against the department, the source shall be awarded reasonable attorney's fees.

7. The department shall not suspend or revoke a permit for an air contaminant source solely because the source has not submitted the fees pursuant to this section.

8. Any Phase I affected unit which is subject to the requirements of Title IV, section 404, of the federal Clean Air Act, as amended, 42 U.S.C. 7651, shall pay annually beginning April 1, 1993, and terminating December 31, 1999, a service fee for the previous calendar year as provided herein. For the first year, the service fee shall be twenty-five thousand dollars for each Phase I affected generating unit to help fund the administration of sections 643.010 to 643.190. Thereafter, the service fee shall be annually set by the commission by rule, following public hearing, based on an annual allocation prepared by the department showing the details of all costs and expenses upon which such fees are based consistent with the department's reasonable needs to administer and implement sections 643.010 to 643.190 and to fulfill its responsibilities with respect to Phase I affected units, but such service fee shall not exceed twenty-five thousand dollars per generating unit. Any such Phase I affected unit which is located on one or more contiguous tracts of land with any Phase II generating unit that pays fees under subsection 1 or subsection 2 of this section shall be exempt from paying service fees under this subsection. A "contiguous tract of land" shall be defined to mean adjacent land, excluding public roads, highways and railroads, which is under the control of or owned by the permit holder and operated as a single enterprise.

9. The department of natural resources shall determine the fees due pursuant to this section by the state of Missouri and its departments, agencies and institutions, including two- and four-year institutions of higher education. The director of the department of natural resources shall forward the various totals due to the joint committee on capital improvements and the directors of the individual departments, agencies and institutions. The departments, as part of the budget process, shall annually request by specific line item appropriation funds to pay said fees and capital funding for projects determined to significantly improve air quality. If the general assembly fails to appropriate funds for emissions fees as specifically requested, the departments, agencies and institutions shall pay said fees from other sources of revenue or funds available. The state of Missouri and its departments, agencies and institutions may receive assistance from the small business technical assistance program established pursuant to section 643.173.

(L. 1992 S.B. 544)

Investigations, when made--violation, how eliminated--hearing, procedure--final order, notice of.

643.080. 1. The director shall investigate alleged violations of sections 643.010 to 643.190 or any rule promulgated hereunder or any term or condition of any permit and may cause to be made such other investigations as he shall deem advisable. The department shall assume the costs of investigation of alleged violations. The identity of the person who filed the complaint shall be made available consistent with chapter 610, RSMo, and other provisions, as applicable.

2. If, in the opinion of the director, the investigation yields reasonable grounds to believe that a violation of section 577.200**, RSMo, is occurring or has occurred, he shall refer such information to either or both the attorney general or the county prosecutor of the county where the violations are alleged to have occurred.

3. If, in the opinion of the director, the investigation discloses that a violation does exist which would not be a criminal violation, he may by conference, conciliation and persuasion endeavor to eliminate the violation.

4. In case of the failure by conference, conciliation and persuasion to correct or remedy any violation, the director may order abatement, suspend or revoke a permit, whichever action or actions the director deems appropriate. The director shall cause to have issued and served upon the person a written notice of such order together with a copy of the order, which shall specify the provisions of sections 643.010 to 643.190 or the rule or the condition of the permit of which the person is alleged to be in violation, and a statement of the manner in, and the extent to which the person is alleged to be in violation. Service may be made upon any person within or without the state by registered mail, return receipt requested. Any person against whom the director issues an order may appeal the order to the commission within thirty days, and the appeal shall stay the enforcement of such order until final determination by the commission. The commission shall set a hearing on a day not less than thirty days after the date of the request. The commission may sustain, reverse, or modify the director's order, or make such other order as the commission deems appropriate under the circumstances. If any order issued by the director is not appealed within the time herein provided, the order becomes final and may be enforced as provided in section 643.151.

5. When the commission schedules a matter for hearing, the petitioner on appeal may appear at the hearing in person or by counsel, and may make oral argument, offer testimony and evidence or cross-examine witnesses.

6. After due consideration of the record, or upon default in appearance of the petitioner on the return day specified in the notice given as provided in subsection 4 of this section, the commission shall issue and enter the final order, or make such final determination as it shall deem appropriate under the circumstances, and it shall immediately notify the petitioner or respondent thereof in writing by certified or registered mail.

7. Any final order or determination or other final action by the commission shall be approved in writing by at least four members of the commission.

(L. 1965 p. 335 § 8, A.L. 1972 H.B. 1184, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.080

**Section 577.200 does not exist.

Administrative penalties, assessment, restriction--conference, conciliation and persuasion--rules--payment--appeal--collection, disposition.

643.085. 1. In addition to any other remedy provided by law, upon a determination by the director that a provision of sections 643.010 to 643.250, or a standard, limitation, order, rule or regulation promulgated pursuant thereto, or a term or condition of any permit has been violated, the director may issue an order assessing an administrative penalty upon the violator under this section. An administrative penalty shall not be imposed until the director has sought to resolve the violations through conference, conciliation and persuasion and shall not be imposed for minor violations of sections 643.010 to 643.250 or minor violations of any standard, limitation, order, rule or regulation promulgated pursuant to sections 643.010 to 643.250 or minor violations of any term or condition of a permit issued pursuant to sections 643.010 to 643.250. If the violation is resolved through conference, conciliation and persuasion, no administrative penalty shall be assessed unless the violation has caused, or has the potential to cause, a risk to human health or to the environment, or has caused or has potential to cause pollution, or was knowingly committed, or is defined by the United States Environmental Protection Agency as other than minor. Any order assessing an administrative penalty shall state that an administrative penalty is being assessed under this section and that the person subject to the penalty may appeal as provided by this section. Any such order that fails to state the statute under which the penalty is being sought, the manner of collection or rights of appeal shall result in the state's waiving any right to collection of the penalty.

2. The commission shall promulgate rules and regulations for the assessment of administrative penalties. The amount of the administrative penalty assessed per day of violation for each violation under this section shall not exceed the amount of the civil penalty specified in section 643.151. Such rules shall reflect the criteria used for the administrative penalty matrix as provided for in the Resource Conservation and Recovery Act, 42 U.S.C. 6928(a), Section 3008(a), and the harm or potential harm which the violation causes, or may cause, the violator's previous compliance record, and any other factors which the department may reasonably deem relevant. An administrative penalty shall be paid within sixty days from the date of issuance of the order assessing the penalty. Any person subject to an administrative penalty may appeal to the commission. Any appeal will stay the due date of such administrative penalty until the appeal is resolved. Any person who fails to pay an administrative penalty by the final due date shall be liable to the state for a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed. Any administrative or civil penalty paid pursuant to sections 643.010 to 643.250 shall be handled in accordance with section 7 of article IX of the state constitution. An action may be brought in the appropriate circuit court to collect any unpaid administrative penalty, and for attorney's fees and costs incurred directly in the collection thereof.

3. An administrative penalty shall not be increased in those instances where department action, or failure to act, has caused a continuation of the violation that was a basis for the penalty. Any administrative penalty must be assessed within two years following the department's initial discovery of such alleged violation, or from the date the department in the exercise of ordinary diligence should have discovered such alleged violation.

4. Any final order imposing an administrative penalty is subject to judicial review upon the filing of a petition pursuant to section 536.100, RSMo, by any person subject to the administrative penalty.

5. The state may elect to assess an administrative penalty, or, in lieu thereof, to request that the attorney general or prosecutor file an appropriate legal action seeking a civil penalty in the appropriate circuit court.

(L. 1991 S.B. 45, A.L. 1992 S.B. 544, A.L. 1993 S.B. 80, et al.)

Generalized condition, emergency risk, what action taken --nongeneralized condition, cease and desist order--injunctive relief, priority in court.

643.090. 1. If the commission or the director finds that a generalized condition of the ambient air due to meteorological conditions and a buildup of air contaminants in any portion of this state constitutes or may constitute an emergency risk to the public health, safety or welfare of those in the area, the commission or the director shall declare that an emergency exists and may, with the written approval of the governor, by order prohibit, restrict or condition all sources of air contaminants contributing to the emergency condition during such periods of time necessary to alleviate or lessen the effects of the emergency condition. The commission shall adopt rules and regulations to implement this subsection. Orders issued pursuant to this subsection shall be enforced by the commission and the state and local police and local air conservation enforcement personnel. Those authorized to enforce such orders may take such reasonable steps as are required to assure compliance therewith.

2. In the absence of a generalized condition of air contaminants as referred to in subsection 1 of this section, and notwithstanding other provisions of this or any other law to the contrary, if the commission or the director determines that any person is engaging or may engage in any activity involving a significant risk of air contamination or is discharging or causing to be discharged into the ambient air, directly or indirectly, any air contaminant, and such activity or discharge constitutes a clear and present danger to the public health or public welfare or the environment, the commission or the director shall issue a written cease and desist order to said person to discontinue immediately such activity

or discharge; provided, however, the commission may countermand such order of the director. If such person, notwithstanding such order, continues the activity or discharge of such contaminants into the atmosphere, the commission or the director shall cause to be filed by the attorney general or other counsel in the name of this state, suit for a temporary restraining order, temporary injunction, and permanent injunction. Any such action shall be given precedence over all other matters pending in the circuit courts.

(L. 1965 p. 335 § 8, A.L. 1972 H.B. 1184, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.090

Testimony at hearings, how recorded--subpoenas, how issued--rules hearings, how held--other hearings, how held--final orders, how approved.

643.100. 1. At any public hearing all testimony taken before the commission shall be under oath and recorded. The transcript so recorded shall be made available to any member of the public or to the respondent or party to any hearing.

2. In any such hearing, any member of the commission or the hearing officer shall issue in the name of the commission notice of hearing and subpoenas. Subpoenas shall be issued and enforced as provided in section 536.077, RSMo. The rules of discovery that apply to any civil case apply to hearings held by the commission.

3. (1) All hearings to promulgate rules and to establish areas of the state shall be held before at least four members of the commission.

(2) All other hearings may be held before one commission member designated by the commission chairman or by a hearing officer who shall be a member of the Missouri bar and shall be appointed by the commission. The hearing officer or commission member shall preside at the hearing and hear all evidence and rule on the admissibility of evidence. The hearing officer or commission member shall make recommended findings of fact and may make recommended conclusions of law to the commission.

(3) All final orders or determinations or other final actions by the commission shall be approved in writing by at least four members of the commission. Any commission member approving in writing any final order or determination or other final action, who did not attend the hearing, shall do so only after reviewing all exhibits and reading the entire transcript.

(L. 1965 p. 335 § 9, A.L. 1972 H.B. 1184, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.100

Commission may grant, modify and revoke variances--director to make recommendation, when.

643.110. 1. The commission may grant individual variances beyond the limitations prescribed in this chapter whenever it is found, upon presentation of adequate proof, that compliance with any provision of this chapter or any rule, requirement or order of the commission or director will result in a taking of property without just compensation or in the closing and elimination of any lawful business, occupation or activity, without sufficient corresponding benefit or advantage to the people; except, that no variance shall be granted where the effect of the variance will permit the continuance of a health hazard; and except, also, that any variance so granted shall not be so construed as to relieve the person who receives the variance from any liability imposed by other law for the commission or maintenance of a nuisance.

2. In determining under what conditions and to what extent a variance may be granted, the commission shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the applicant and to those affected by air contaminants emitted by the applicant.

3. Variances shall be granted for such period of time and under such terms and conditions as shall be specified by the commission in its order. The variance may be extended by affirmative action of the commission.

4. Any person seeking a variance shall do so by filing a petition for variance with the director. The director shall promptly investigate the petition and make a recommendation to the commission as to the disposition thereof. Upon receiving the recommendation of the director, if the recommendation is against the granting of a variance, a hearing shall be held if requested as provided in section 643.100. If the recommendation of the director is for the granting of a variance, the commission may do so without a hearing; except, that upon the petition of any person aggrieved by the granting of the variance, a hearing shall be held as provided in section 643.100. In any hearing under this section, however, the burden of proof shall be on the person petitioning for a variance.

5. Upon failure to comply with the terms and conditions of any variance as specified by the commission, the variance may be revoked or modified by the commission after a hearing held upon not less than thirty days' written notice. The notice shall be served upon all persons who will be subjected to greater restrictions if the variance is revoked or modified and all persons who have filed with the director a written request

for notification.

6. The director shall take action within thirty days after a petition has been filed and shall make a recommendation to grant or deny the petition for a variance within one hundred twenty days. If the director fails to make a recommendation within the time period specified, the person seeking the variance may request a hearing as provided in section 643.100.

(L. 1965 p. 335 § 10, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.110

Commission shall act upon request--decision rendered, when--action to compel completion of proceedings.

643.120. The commission shall promptly act upon any request for a hearing or appeal which is filed pursuant to the provisions of this chapter. The commission shall cause a hearing to be set within sixty days of a request for hearing or appeal. The record, which shall consist of a transcript of all testimony taken, all exhibits, final arguments or briefs of the parties and recommended findings of fact and conclusions of law if required of a designated commission member or hearing officer pursuant to subsection 3 of section 643.100, shall be submitted to the commission within sixty days after the hearing. The commission shall render a decision within sixty days after the submission of the record. The time limitations in this section may be shortened or enlarged by consent of the parties and the commission as justice may require. A party aggrieved by unreasonable delay on the part of the commission or member or hearing officer designated to conduct the proceedings may file an action in the circuit court of Cole County to compel the completion of the administrative proceedings and a final decision by the commission and to recover from the commission all attorney fees reasonably incurred as a result of the delay.

(L. 1965 p. 335 § 11, A.L. 1972 H.B. 1184, A.L. 1988 H.B. 1187, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.120

Judicial review.

643.130. All final orders or determinations of the commission or the director hereunder shall be subject to judicial review pursuant to the provisions of sections 536.100 to 536.140, RSMo. No judicial review shall be available hereunder, however, unless and until all administrative remedies are exhausted.

(L. 1965 p. 335 § 12, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.130

Political subdivisions not preempted in field of air pollution --certificate of authority to issue permits and variances, grounds for revocation.

643.140. 1. Except as provided under this section, the legislature does not intend by the provisions of sections 643.010 to 643.190 to occupy the field by preemption. Subject to the provisions of this section, any city or county of this state is empowered, notwithstanding any limitation or provision of law to the contrary, to enact and enforce ordinances or orders which are consistent with the provisions of sections 643.010 to 643.190 and applicable rules promulgated hereunder. Any constitutional or special charter county or city and any first or second class county or city may apply to the commission for a certificate of authority to operate its own permit and variance program within the boundaries of such county or city. The commission may grant such certificate, after public hearing, if it determines that such action advances the policy of sections 643.010 to 643.190. Any county which has such a certificate of authority may enforce its air pollution control regulations, and permit and variance procedures, in cities within such county and such cities will not be entitled to such a certificate of authority.

2. Any city or county with a certificate of authority may issue permits and variances subject to the requirements of sections 643.010 to 643.190, and rules of the commission and subject to renewal as provided herein. Any city or county which issues a permit or variance under this section shall within fifteen days notify the commission of such issuance and forward copies of all applications, evidence, and other information relating thereto. Within thirty days after receipt thereof, the director shall approve or disapprove such permit or variance, or shall request from the applicant such additional information as he deems necessary or shall refer the permit or variance to the commission for a hearing thereon. In the event of disapproval the applicant, an affected person or the holder of a certificate or other affected public authority may request a public hearing within thirty days. After such hearing, the commission may affirm, reverse, modify or amend the permit or variance in any way, or issue such other order as in its judgment will advance the policy of sections 643.010 to 643.190.

3. A final permit or variance issued by the holder of a certificate of authority shall serve as a permit or variance granted by the commission

under sections 643.010 to 643.190.

4. The commission may enforce the provisions of sections 643.010 to 643.190 and its rules promulgated thereunder in any city or county with a certificate of authority.

5. Constitutional charter counties and cities above seventy-five thousand population may enact and enforce ordinances pursuant to the powers granted them by law, and subject to the provisions of sections 643.010 to 643.190.

6. (1) First class and second class counties may, by resolution of a majority of the county commission, adopt and enforce the standards, rules and regulations of the commission for that area of the state as promulgated under sections 643.010 to 643.190.

(2) The governing bodies of such cities and counties are authorized and empowered to provide for an air pollution control officer, or may designate the county health officer, to implement, enforce and carry out the county air pollution control program. The city or county governing body and the designated control officer shall have the same powers and duties as those of the commission and the director, respectively, as provided in sections 643.010 to 643.190. All final orders or determinations shall be reviewable under this section and section 643.130 and may be enforced as provided in section 643.151, except that the prosecuting attorney shall bring action at the request of the city or county governing body.

7. Third and fourth class counties adjacent to constitutional charter, first and second class counties holding a certificate of authority, or adjacent to an air pollution region as hereinafter defined, may, by order of a majority of the county commission, adopt the rules of the commission applicable to that area of the state promulgated under sections 643.010 to 643.190. Such rules and regulations may only be enforced by such counties if a contract and agreement has been entered into for enforcement of the rules and regulations with an adjacent constitutional first or second class county holding a certificate of authority.

8. Subject to the provisions of this section and notwithstanding any limitation or provisions of law to the contrary, any city or county, through its governing body, may form an air pollution region by entering into and performing with other political subdivisions of this state such contracts and agreements as they may deem proper for or concerning the establishing, planning, operation and financing of an air pollution control program to accomplish the purposes of sections 643.010 to 643.190; except that such agreement shall be entered into consistent with the provisions of chapter 70, RSMo.

9. Any certificate of authority issued by the commission to any city or county prior to August 13, 1972, shall continue in force as a certificate of authority under this section, subject, however, to revocation as provided in subsection 10 of this section.

10. If the commission determines at any time after hearing that an ordinance, order or rule is inconsistent with or is being enforced in a manner inconsistent with the provisions of sections 643.010 to 643.190 or any rule hereunder, in any city or county holding a certificate of authority, the commission may suspend or repeal the certificate of authority.

(L. 1965 p. 335 § 13, A.L. 1967 p. 296, A.L. 1971 H.B. 66, A.L. 1972 H.B. 1184, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.140

Violations, penalties, notice--civil action--offer of settlement, method--disclosure of confidential information, penalty.

643.151. 1. It is unlawful for any person to cause or permit any air pollution by emission of any air contaminant from any air contaminant source located in Missouri, in violation of sections 643.010 to 643.190, or any rule promulgated by the commission.

2. No person who knows or should know of the existence of such rules may cause or permit any air pollution by emission of any air contaminant source located outside Missouri, and which emissions enter Missouri in excess of the emission control regulations applicable to the portion of Missouri where the air contaminant enters the state.

3. In the event the commission determines that any provision of sections 643.010 to 643.190, or the rules promulgated hereunder, permits issued, or any final order or determination made by the commission or the director is being violated, the commission may cause to have instituted a civil action in any court of competent jurisdiction for injunctive relief to prevent any further violation or for the assessment of a penalty not to exceed ten thousand dollars for each violation per day for each day, or part thereof, the violation continues to occur, or both, as the court may deem proper. A civil monetary penalty under this section shall not be assessed for a violation where an administrative penalty was assessed under section 643.085. The commission may request the attorney general or other counsel to bring such action in the name of the people of the state of Missouri. Process may be served in any manner provided by chapter 506, RSMo, including but not limited to sections 506.510 and 506.520, RSMo. Suit may be brought in any county where the defendant's principal place of business is located or where the air contaminant source is located or where the air contaminants enter the state of Missouri. Any offer of settlement to resolve a civil penalty under this section shall be in writing, shall state that an action for imposition of a civil penalty may be initiated by the attorney general or a prosecuting attorney representing the department under authority of this section, and shall identify any dollar amount as an offer of settlement

which shall be negotiated in good faith through conference, conciliation and persuasion.

4. Any member of the commission or employee thereof who is convicted of willful disclosure or conspiracy to disclose confidential information to any person other than one entitled to the information under sections 643.010 to 643.190 is guilty of a class A misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars.

5. No liability shall be imposed upon persons violating the provisions of sections 643.010 to 643.190 or any rule hereunder due to any violation caused by an act of God, war, strike, riot or other catastrophe.

(L. 1972 H.B. 1184 § 203.150, A.L. 1992 S.B. 544, A.L. 1993 S.B. 80, et al.)

*Transferred 1986; formerly 203.151

State or political subdivisions contracting with persons not having a permit or in contempt of court prohibited.

643.161. 1. No officer, agency or department of the state government, or of any political subdivision of this state shall enter into a contract with any person required to apply for a permit under the provisions of sections 643.010 to 643.190 unless such person has applied for or received a permit or has been granted a variance therefor pursuant to sections 643.010 to 643.190.

2. No contract shall be entered into by any such governmental authority with any person who is in contempt of any court order enforcing the provisions of sections 643.010 to 643.190.

(L. 1972 H.B. 1184 § 203.160, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.161

Existing penalties not to be impaired--no actionable rights created, exceptions.

643.170. 1. Existing civil or criminal remedies for any wrongful action which is a violation of any part of this chapter or any rule of the commission promulgated hereunder shall not be excluded or impaired by sections 643.010 to 643.190.

2. Nothing in sections 643.010 to 643.190 shall be construed to create or imply a private cause of action for a violation of sections 643.010 to 643.190. A determination by the director, the commission or political subdivisions under section 643.140 that air pollution or air contamination exists or that any rule, ordinance or order has been violated, whether or not a proceeding or action is brought by the state, shall not create by reason thereof any presumption of law which shall inure to or be for the benefit of any person other than the state, the commission or political subdivision.

(L. 1965 p. 335 § 15, A.L. 1972 H.B. 1184, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.170

Small business technical assistance program established, duties --advisory committee created, members, appointment, terms, compensation, duties.

643.173. 1. There is hereby established within the department of natural resources a "Small Business Technical Assistance Program" which shall provide support and assistance to small business. To the maximum extent possible, the program shall be functionally separate from the department's air pollution enforcement responsibilities. The program shall advise regulated small business regarding permit application requirements, applicable provisions of 643.010 to 643.190, and such other matters affecting small business as deemed appropriate by the committee. The commission shall establish time frames in which specific classes of deficiencies, except those affecting public health or the environment, shall be corrected.

2. The small business technical assistance program shall be advised by a "Small Business Compliance Advisory Committee" which is hereby created. One member shall be appointed by the director of the department, two members shall be appointed by the governor to represent the public and four owners of small businesses regulated under this chapter shall be appointed by the general assembly, one each appointed by the majority and minority leaders of each chamber of the general assembly. No member of the air conservation commission shall serve as a member of the small business compliance advisory committee. The term of office shall be four years except that of those first appointed, one member appointed by the governor, one member appointed by the senate and one member appointed by the house of representatives shall be appointed to two-year terms. Members shall serve until their successors are duly appointed and qualified and vacancies shall be filled by

appointment for the remaining portion of the unexpired term created by the vacancy. The members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties while in attendance at committee meetings.

3. The committee shall:

- (1) Receive reports from the ombudsman pursuant to section 643.175;
- (2) Evaluate the impact of sections 643.010 to 643.190 and the rules promulgated thereunder on small business;
- (3) Review and assess the impact of enforcement policies on small business operations in Missouri;
- (4) Recommend to the department, the commission and the general assembly, as appropriate, changes in procedure, in rules or in the law which would facilitate small business compliance with sections 643.010 to 643.190;
- (5) Recommend to the commission rules establishing an expedited review of modifications for small businesses;
- (6) Conduct hearings, determine facts and make investigations consistent with the purposes of this section.

(L. 1992 S.B. 544)

Small business ombudsman, duties--appointment.

643.175. 1. There is created within the office of governor a small business ombudsman who shall:

- (1) Monitor the small business technical assistance program established in section 643.173;
- (2) Advise and assist small businesses regulated under sections 643.010 to 643.190;
- (3) Recommend to the committee and the commission appropriate changes in the rules which would facilitate small business compliance with sections 643.010 to 643.190;
- (4) Receive and review complaints about the administration of sections 643.010 to 643.190 as such administration affects small business; and
- (5) Issue a report with recommendations to the department within one hundred twenty days of receiving a complaint from a small business. The department shall take action to remedy the complaint and notify the ombudsman of its action within thirty days of receipt or submit a written explanation of its reasons for not complying with the recommendations of the ombudsman.

2. The small business ombudsman shall be appointed by the governor, with the advice and consent of the senate for a term of office which shall be concurrent with that of the governor. The ombudsman may be reappointed. A vacancy shall be filled for the remainder of the unexpired term.

(L. 1992 S.B. 544)

Department to be air pollution agency for purposes of federal air pollution control acts.

643.190. The department of natural resources is hereby designated as the air pollution agency of the state for all purposes of any federal air pollution control act and may:

- (1) Take all necessary or appropriate action to obtain for the state the benefits of any federal act;
- (2) Apply for and receive federal funds made available under any federal act;
- (3) Approve projects for which loans or grants under any federal act are made to any municipality or agency of the state;
- (4) Participate through its authorized representatives in proceedings under any federal act and recommend measures for the reduction of air pollution originating within the state.

(L. 1972 H.B. 1184, A.L. 1992 S.B. 544)

*Transferred 1986; formerly 203.190

Violation of certain requirements unlawful, penalty--false statements unlawful, penalty.

643.191. 1. It is unlawful for any person to knowingly violate any applicable standard, limitation, permit condition or any fee or filing requirement promulgated pursuant to sections 643.010 to 643.190 or any rule promulgated thereunder. Any person violating the provisions of this subsection shall, upon conviction thereof, be subject to a fine of not more than ten thousand dollars per day of violation or part thereof.

2. It is unlawful for any person to knowingly make a false statement, representation or certification in any form, in any notice or report required by a permit or to knowingly render inaccurate any monitoring device or method required to be maintained by the permitting authority under sections 643.010 to 643.190. Any person violating the provisions of this subsection shall, upon conviction thereof, be subject to a fine of not more than ten thousand dollars for each instance of violation.

(L. 1992 S.B. 544 § 577.200)

Evaluation of costs of compliance--department to tabulate information--report filed, with whom, when.

643.192. 1. Sources required to file an annual emissions inventory questionnaire with the department shall submit, with the questionnaire, an evaluation of the additional costs of doing business attributable to the federal Clean Air Act, as amended. The source also shall submit an estimate of the number of jobs reduced or added at each individual business as a result of compliance with the federal Clean Air Act, as amended.

2. The department shall tabulate information required to be submitted by employers under this section into a summary of the costs to the state attributable to compliance with the federal Clean Air Act, as amended. The department also shall tabulate the annual changes in air quality measured by the department and local and county air pollution control agencies, as required by the federal Clean Air Act, as amended. The department shall provide an annual report to the commission and the general assembly beginning on January 1, 1995, which includes a summary of the information gathered pursuant to this section and the information required to be reported under subsection 5 of section 643.305. Using federal estimates if such estimates are available, the department shall correlate improvements in air quality with avoided health costs.

(L. 1992 S.B. 544 § 4, A.L. 1994 S.B. 590)

Rules, promulgation.

643.210. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

(L. 1988 H.B. 1187 § 1, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

Missouri emissions banking and trading program established by commission--promulgation of rules.

643.220. 1. The commission shall promulgate rules establishing a "Missouri Air Emissions Banking and Trading Program" to achieve and maintain the National Ambient Air Quality Standards established by the United States Environmental Protection Agency pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended. In promulgating such rules, the commission may consider, but not be limited to, inclusion of provisions concerning the definition and transfer of air emissions reduction credits or allowances between mobile sources, area sources and stationary sources, the role of offsets in emissions trading, interstate and regional emissions trading and the mechanisms necessary to facilitate emissions trading and banking, including consideration of the authority of other contiguous states.

2. The program shall:

(1) Not include any provisions prohibited by federal law;

(2) Be applicable to criteria pollutants and their precursors as defined by the federal Clean Air Act, as amended;

- (3) Not allow banked or traded emissions credits to be used to meet federal Clean Air Act requirements for hazardous air pollutant standards pursuant to Section 112 of the federal Clean Air Act;
 - (4) Allow the banking and trading of criteria pollutants that are also hazardous air pollutants, as defined in Section 112 of the federal Clean Air Act, to the extent that verifiable emissions reductions achieved are in excess of those required to meet hazardous air pollutant emissions standards promulgated pursuant to Section 112 of the federal Clean Air Act;
 - (5) Authorize the direct trading of air emission reduction credits or allowances between nongovernmental parties, subject to the approval of the department;
 - (6) Allow net air emission reductions from federally approved permit conditions to be transferred to other sources for use as offsets required by the federal Clean Air Act in nonattainment areas to allow construction of new emission sources; and
 - (7) Not allow banking of air emission reductions unless they are in excess of reductions required by state or federal regulations or implementation plans.
3. The department shall verify, certify or otherwise approve the amount of an air emissions reduction credit before such credit is banked. Banked credits may be used, traded, sold or otherwise expended within the same nonattainment area, maintenance area or air quality modeling domain in which the air emissions reduction occurred, provided that there will be no resulting adverse impact of air quality.
 4. To be creditable for deposit in the Missouri air emissions bank, a reduction in air emissions shall be permanent, quantifiable and federally approved.
 5. To be tradeable between air emission sources, air emission reduction credits shall be based on air emission reductions that occur after August 28, 2001, or shall be credits that exist in the current air emissions bank.
 6. In nonattainment areas, the bank of criteria pollutants and their precursors shall be reduced by three percent annually for as long as the area is classified as a nonattainment area.

(L. 2001 H.B. 453 merged with S.B. 374, A.L. 2002 S.B. 984 & 985 merged with S.B. 1163)

Rules for asbestos abatement projects, standards and examinations --certification requirements--application--examination, content --certificate expires, when--fees--renewal of certificate requirements--refresher course--failure to pass examination, may repeat exam, when--fee for renewal--exemption status, qualifications, application fee--revocation of exemption status, notice--appeal.

643.225. 1. The provisions of sections 643.225 to 643.250 shall apply to all asbestos abatement projects. The commission shall promulgate rules and regulations it deems necessary to implement and administer the provisions of sections 643.225 to 643.250, including requirements, procedures and standards relating to asbestos projects, as well as the authority to require corrective measures to be taken in asbestos abatement projects as are deemed necessary to protect public health and the environment. The director shall establish any examinations for certification required by this section and shall hold such examinations at times and places as determined by the director.

2. Except as otherwise provided in sections 643.225 to 643.250, no individual shall engage in an asbestos abatement project, inspection, management plan, abatement project design or asbestos air sampling unless the person has been issued a certificate by the director, or by the commission after appeal, for that purpose.

3. In any application made to the director to obtain such certification as an inspector, management planner, abatement project designer, supervisor, contractor or worker from the department, the applicant shall include his diploma providing proof of successful completion of either a state accredited or United States Environmental Protection Agency (EPA) accredited training course as described in section 643.228. In addition, an applicant for certification as a management planner shall first be certified as an inspector. All applicants for certification as an inspector, management planner, abatement project designer, supervisor, contractor or worker shall successfully pass a state examination on Missouri state asbestos statutes and rules relating to asbestos. Certification issued hereunder shall expire one year from its effective date. Individuals applying for state certification as an asbestos air sampling professional shall have the following credentials:

- (1) A bachelor of science degree in industrial hygiene plus one year of experience in the field; or
- (2) A master of science degree in industrial hygiene; or
- (3) Certification as an industrial hygienist as designated by the American Board of Industrial Hygiene; or

(4) Three years of practical experience in the field of industrial hygiene, including significant asbestos air monitoring experience and the completion of a forty-hour asbestos course which includes air monitoring instruction (National Institute of Occupational Safety and Health 582 course on air sampling or equivalent). In addition to these qualifications, the individual must also pass the state of Missouri asbestos examination. All asbestos air sampling technicians shall be trained and overseen by an asbestos air sampling professional and shall meet the requirements of training found in OSHA's 29 CFR 1926.58. Certification under this section as an AHERA asbestos abatement project designer does not qualify an individual as an architect, engineer or land surveyor, as defined in chapter 327, RSMo.

4. An application fee of seventy-five dollars shall be assessed for each category, except asbestos abatement worker, to cover administrative costs incurred. An application fee of twenty-five dollars shall be assessed for each asbestos abatement worker to cover administrative costs incurred. A fee of twenty-five dollars shall be assessed per state examination.

5. In order to qualify for renewal of a certificate, an individual shall have successfully completed an annual refresher course from an Environmental Protection Agency or state of Missouri accredited training program. For each discipline, the refresher course shall review and discuss current federal and state statute and rule developments, state-of-the-art procedures and key aspects of the initial training course, as determined by the state of Missouri. For all categories except inspectors, individuals shall complete a one-day annual refresher training course for recertification. Refresher courses for inspectors shall be at least a half-day in length. Management planners shall attend the inspector refresher course, plus an additional half-day on management planning. All refresher courses shall require an individual to successfully pass an examination upon completion of the course. In the case of significant changes in Missouri state asbestos statutes or rules, an individual shall also be required to take and successfully pass an updated Missouri state asbestos examination. An individual who has failed the Missouri state asbestos examination may retake it on the next scheduled examination date. If his certification has lapsed for more than twenty-four months, he shall be required to retake the course in his specialty area described in this section. Failure to comply with the requirements for renewal of certification in this section will result in decertification. In no event shall certification or recertification constitute permission to violate sections 643.225 to 643.250 or any standard or rule promulgated under sections 643.225 to 643.250.

6. A fee of five dollars shall be paid to the state for renewal of certificates to cover administrative costs.

7. The provisions of subsections 2 through 6 of this section, section 643.228, subdivision (4) of subsection 1 of section 643.230, sections 643.232 and 643.235, subdivisions (1) to (3) of subsection 1 of section 643.237, and subsection 2 of section 643.237 shall not apply to a person that is subject to requirements and applicable standards of the United States Environmental Protection Agency (EPA) and the United States Occupational Safety and Health Administration's (OSHA) 29 Code of Federal Regulations 1926.58 and which engages in asbestos abatement projects as part of normal operations in the facility solely at its own place or places of business. A person shall receive an exemption upon submitting to the director, on a form provided by the department, documentation of the training provided to their employees to meet the requirements of applicable OSHA and EPA rules and regulations and the type of asbestos abatement projects which constitute normal operations performed by the applicant. If the application does not meet the requirements of this subsection and the rules and regulations promulgated by the department, the applicant shall be notified, within one hundred eighty days of the receipt of the application, that his exemption has been revoked. An applicant may appeal the revocation of an exemption to the commission within thirty days of the notice of revocation. This exemption shall not apply to asbestos abatement contractors, to those persons who the commission by rule determines provide a service to the public in its place or places of business as the economic foundation of the facility, or to those persons subject to the requirements of the federal Asbestos Hazard Emergency Response Act of 1986 (P.L. 99-519). A representative of the department shall be permitted to attend, monitor and evaluate any training program provided by the exempted person. Such evaluations may be conducted without prior notice. Refusal to allow such an evaluation is sufficient grounds for loss of exemption status.

8. A fee of two hundred fifty dollars shall be submitted with the application for exemption. This is a one-time fee. Exempted persons shall submit to the director changes in curricula or other significant revisions to the training program as they occur.

(L. 1989 H.B. 77, et al.)

Effective 6-13-89

Training courses to be certified--evaluation by department of health and senior services, when--violation, effect--accreditation fee--reciprocity with other states.

643.228. 1. Required training courses for certification under section 643.225 shall first be accredited by the state. To be accredited, training programs shall meet the training certification and recertification requirements for each specialty area outlined in the United States EPA's model accreditation plan, 40 CFR Part 763, including passage of a course examination for these courses, and the certification requirements for air sampling professionals outlined in section 643.225. Such accreditation shall be obtained biennially. A representative of the department or the department of health and senior services shall be permitted to attend, monitor and evaluate any training program without charge to the state. Such evaluations may be conducted without prior notice. Refusal to allow such an evaluation is sufficient grounds for loss of certificate of accreditation.

2. An accreditation fee of one thousand dollars per course category shall be paid prior to issuance or renewal of a certificate of accreditation, however, no individual, group, agency or organization shall pay more than three thousand dollars for all course categories for which accreditation is requested at the same time.

3. The director may engage in reciprocity agreements with other states that have established accreditation criteria for certification training programs that meet or exceed Missouri's accreditation criteria.

(L. 1989 H.B. 77, et al.)

Effective 6-13-89

Denial, suspension or revocation by director, certifications, accreditation of training program or exemption status--grounds --procedure--appeal to commission, powers of commission.

643.230. 1. The director may deny, suspend or revoke any certification, accreditation or exemption status under sections 643.225 to 643.250 if the director finds that the applicant has:

- (1) Fraudulently or deceptively obtained or attempted to obtain a certificate, or accreditation or exemption status;
- (2) Failed at any time to meet the qualifications for certification, accreditation or exemption or to comply with any applicable provision or requirement of sections 643.225 to 643.250;
- (3) Failed at any time to meet any applicable federal or state requirements for removal, encapsulation, enclosure or demolition of asbestos;
- (4) Failed to provide proof of certification on the job site;
- (5) Failed to meet the state of Missouri accreditation or exemption requirements for training programs.

2. Suspension of a certificate or exemption under this section may not be in effect for a period greater than ninety days. At the end of such period of time, the certificate or exemption shall be reinstated unless the director has revoked the certificate or exemption or the certificate has expired.

3. Upon denial, suspension, or revocation of certification, accreditation or exemption by the director, the applicant may appeal to the commission by filing notice of appeal with the commission within thirty days of the notice of denial, suspension or revocation. The commission shall hold a hearing at a time not more than sixty days after the date of request. If the commission determines that the applicant meets the requirements of section 643.225 and has not committed any violation indicated in section 643.225, 643.228, or in this section, and the rules promulgated thereto, the commission may issue certification, accreditation or exemption to the individual.

(L. 1989 H.B. 77, et al.)

Effective 6-13-89

Asbestos abatement contractor required to register annually, qualifications--project requirements--registration fee.

643.232. 1. All asbestos abatement contractors prior to engaging in asbestos abatement projects shall:

- (1) Register with the department and reregister annually as provided by rule;
- (2) Submit an application for registration on a form developed by the department;
- (3) Use only those individuals that have been certified or trained in accordance with sections 643.225 to 643.250.

2. During asbestos abatement projects, all contractors shall:

- (1) Comply with applicable United States Environmental Protection Agency regulations and guidelines, the standards for worker protection promulgated by the United States Occupational Safety and Health Administration in 29 CFR 1910.1001, 1910.1200 and 1926.58, the provisions of sections 643.225 to 643.250 and the rules and regulations promulgated thereunder. It is not intended that the director shall enforce OSHA requirements but shall have the authority to deny, revoke, or suspend registration on the basis of finding of violation by OSHA;
- (2) Ensure that a competent person be on the asbestos abatement project site directing all aspects of the project during the hours that the project is being conducted.

3. A registration fee of one thousand dollars shall be paid by the person to the state prior to registration.

(L. 1989 H.B. 77, et al.)

Effective 6-13-89

**Registration, denial, suspension or revocation by directors, grounds --appeal to commission, procedure--
commission's powers--revocation of registration, person may reapply, when.**

643.235. 1. The director may deny, suspend or revoke any person's registration under sections 643.225 to 643.250 if the director finds that the applicant has:

- (1) Failed to meet the requirements of section 643.232;
- (2) Failed to use certified or trained individuals as required in section 643.232;
- (3) Failed at any time to meet any applicable federal, state or local standards for removal, encapsulation, enclosure or demolition of asbestos; or
- (4) Failed to renew his registration annually.

2. Upon denial, suspension, or revocation of registration by the director, the person may appeal to the commission by filing notice of appeal with the commission within thirty days of the notice of denial, suspension or revocation. The commission shall hold a hearing at a time not more than ninety days after the date of request. If the commission determines that the person meets the requirements of section 643.232 and has not committed any violation indicated in this section, and the rules promulgated thereto, the commission shall issue registration to the person.

3. If a person's registration has been revoked, he may reapply for registration one year from the date of revocation if the director finds that he meets the requirements of sections 643.225 to 643.250.

(L. 1989 H.B. 77, et al.)

Effective 6-13-89

**Projects requiring special application, form, contents--procedure --fee, exemptions from fee--emergency
projects, procedure--revision of project plans, notification of department required.**

643.237. 1. Any person undertaking an asbestos abatement project of a magnitude greater than or equal to one hundred sixty square feet or two hundred sixty linear feet shall meet the following requirements:

- (1) The person shall submit an application for asbestos abatement to the department for review at least twenty days in advance. The application shall be in the form required by the department. Such application shall include the name and address of the applicant, a description of the proposed project and any other information as may be required by the commission and provide proof to the department that all employees engaged in an asbestos abatement project are in compliance with sections 643.225 and 643.228;
- (2) Persons undertaking an asbestos abatement project shall notify the department within sixty days of the completion of the project in the form required by the department;
- (3) Persons undertaking an emergency asbestos abatement project of this magnitude shall submit a notification to the department within twenty-four hours of the onset of the emergency. An application for permit to abate shall be submitted to the department within seven days of the onset of the emergency;
- (4) A fee of one hundred dollars shall be paid for review of each asbestos abatement project notification of this magnitude;
- (5) Any person undertaking an asbestos abatement project in the jurisdiction of an authorized local air pollution control agency shall be exempt from an application fee if the authorized local agency also imposes an application fee.

2. Any person undertaking an asbestos abatement project of a magnitude less than one hundred sixty square feet or two hundred sixty linear feet, but greater than ten square feet or sixteen linear feet shall meet the following requirements:

(1) The person shall submit notification to the department for review at least twenty days in advance. The notification shall be in the form required by the department. Such notification shall include the name and address of the applicant, a description of the proposed project and any other information as may be required by the department and provide proof to the department that all employees engaged in an asbestos abatement project are in compliance with sections 643.225 and 643.228. In addition, the person shall post for inspection, at the site, current certificates of all individuals engaged in the asbestos abatement project as well as proof of the person's current registration;

(2) Persons undertaking an asbestos abatement project shall notify the department within sixty days of the completion of the project in the form required by the department;

(3) Persons undertaking an emergency asbestos abatement project of this magnitude shall submit notification to the department within twenty-four hours of the onset of the emergency.

3. Any person who submits an asbestos abatement project notification to the department shall submit actual project dates and times for his project. If the dates and times are revised on this project as submitted to the department, the person is responsible to notify the department at least twenty-four hours prior to the original starting date of the project by telephone and then followup with a written amendment stating the change in date and time. If the person does not comply with this procedure, he shall be held in violation of the notification requirements found in this section. This requirement does not change the reporting requirements for notification, post notification and emergency projects specified in this section.

(L. 1989 H.B. 77, et al.)

Effective 6-13-89

Friable material subject to regulation--air sample analysis, how conducted.

643.240. 1. Before commencement of an asbestos abatement project, persons shall make all reasonable efforts to minimize the spread of friable asbestos-containing materials to uncontaminated areas.

2. Any asbestos-containing material that will be rendered friable during the process of removal, encapsulation, enclosure or demolition is subject to all applicable federal and state regulations.

3. Analysis of asbestos air samples shall be conducted according to the United States Occupational Safety and Health Administration's (OSHA) standards in 29 CFR 1926.58.

(L. 1989 H.B. 77, et al.)

Effective 6-13-89

Inspection of projects, when--inspection fee--postponement of project, notice to department, failure to notify, effect--exemption from fee for local air pollution control agency, when.

643.242. 1. Asbestos abatement projects of a magnitude greater than or equal to ten square feet or sixteen linear feet are subject to inspection.

2. The commission shall be authorized to assess a fee of not more than one hundred dollars for each on-site inspection of asbestos abatement projects. Such fees would not be assessed for more than three on-site inspections during the period an actual abatement project is in progress. Failure of the asbestos abatement contractor to notify the department of project postponement may result in the assessment of an inspection fee in the event of an on-site visit by the department.

3. Any person undertaking an asbestos abatement project in the jurisdiction of an authorized local air pollution control agency shall be exempt from an inspection fee if the authorized local agency also imposes an inspection fee.

(L. 1989 H.B. 77, et al.)

Effective 6-13-89

Natural resources protection fund--air pollution asbestos fee subaccount created--all moneys received to be deposited in fund --purpose--lapse into general revenue prohibited--fund deposited where, by state treasurer,

interest credited to fund.

643.245. 1. All moneys received pursuant to sections 643.225 to 643.250 and any other moneys so designated shall be placed in the state treasury and credited to the "Natural Resources Protection Fund--Air Pollution Asbestos Fee Subaccount", which is hereby created. Such moneys received pursuant to sections 643.225 to 643.250 shall, subject to appropriation, be used solely for the purpose of administering this chapter. Any unexpended balance in such fund at the end of any appropriation period shall not be transferred to the general revenue fund of the state treasury and shall be exempt from the provisions of section 33.080, RSMo.

2. The state treasurer, with the approval of the board of fund commissioners, is authorized to deposit all of the moneys in any of the qualified state depositories. All such deposits shall be secured in such manner and shall be made upon such terms and conditions as are now and may hereafter be approved by law relative to state deposits. Any interest received on such deposits shall be credited to the natural resources protection fund--air pollution asbestos fee subaccount.

(L. 1989 H.B. 77, et al.)

Effective 6-13-89

Entry by department on public or private property for regulation purposes--refusal to allow grounds for revocation or injunctions, violations of regulations, penalties.

643.250. 1. Any authorized representative of the department may enter at all reasonable times, in or upon public or private property for purposes required under sections 643.225 to 643.250. Refusal to allow such entry shall be grounds for revocation of registration or injunctive relief.

2. Any person who knowingly violates sections 643.225 to 643.250, or any rule promulgated thereunder, shall, upon conviction, be punished by a fine of not less than twenty-five hundred dollars nor more than twenty-five thousand dollars per day of violation, or by imprisonment for not more than one year, or both. Second and successive convictions of any person shall be punished by a fine of not more than fifty thousand dollars per day of violation, or by imprisonment for not more than two years, or both.

3. Any person who violates any provision of sections 643.225 to 643.250 may, in addition to any other penalty provided by law, incur a civil penalty in an amount not to exceed ten thousand dollars for each day of violation. The civil penalty shall be in an amount to constitute an actual and substantial economic deterrent to the violation for which the civil penalty is assessed. Any civil penalty paid shall be placed in the natural resources protection fund--*air pollution asbestos fee subaccount*.

4. Notwithstanding the existence or pursuit of any other remedy provided by sections 643.225 to 643.250, the commission may maintain, in the manner provided by chapter 536, RSMo, an action in the name of the state of Missouri for injunction or other process against any person to restrain or prevent any violation of the provisions of sections 643.225 to 643.250.

(L. 1989 H.B. 77, et al.)

Effective 6-13-89

.... Words "pollution asbestos fee account." appear in original rolls.

Certification authorized for persons completing asbestos and earthquake training.

643.251. Persons who have completed a course of study on earthquake preparedness which meets state standards and persons who have completed a training course on asbestos abatement which complies with state standards for training courses subsequently adopted under the provisions of sections 643.225 to 643.250 shall be deemed to have complied with requirements for certification without passage of any other course of training.

(L. 1990 S.B. 539 § 9)

Definitions.

643.253. As used in sections 643.253 and 643.255, the following terms mean:

(1) "Asbestos", the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite;

(2) "Asbestos abatement projects", an activity undertaken to encapsulate, enclose or remove ten square feet or sixteen linear feet or more of friable asbestos-containing materials from buildings and other air contaminant sources, or to demolish buildings and other air contaminant sources containing ten square feet or sixteen linear feet or more;

(3) "Friable asbestos-containing material", any material that contains more than one percent asbestos, by weight, which is applied to ceilings, walls, structural members, piping, ductwork or any other part of a building or other air contaminant sources and which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure.

(L. 1986 H.B. 1394 § 1, A.L. 1989 H.B. 77, et al.)

Effective 6-13-89

*Transferred 1994; formerly 701.100

Cities, counties, state agencies, requirements.

643.255. 1. No state agency or political subdivision of this state shall accept a bid in connection with any asbestos abatement project that does not fully comply with the provisions of sections 643.225 to 643.250.

2. No state agency or political subdivision of this state shall carry out any asbestos abatement project using its own employees except in compliance with the requirements of sections 643.225 to 643.250.

(L. 1986 H.B. 1394 § 4, A.L. 1989 H.B. 77, et al.)

Effective 6-13-89

*Transferred 1994; formerly 701.106

Definitions.

643.260. As used in sections 643.260 to 643.265, the following terms mean:

(1) "Asbestos", the asbestiform varieties of chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite;

(2) "Asbestos-containing material", any material which contains more than one percent of asbestos by weight;

(3) "Friable asbestos-containing material", any material that contains more than one percent asbestos, by weight, which is applied to ceilings, walls, structural members, piping, ductwork or any other part of a building or other air contaminant sources and which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure;

(4) "Person", any individual, partnership, copartnership, firm, company, or public or private corporation, association, joint stock company, trust, the state, political subdivision, or any agency, board, department or bureau of the state or federal government, or any other legal entity whatever which is recognized by law as the subject of rights and duties;

(5) "School district", seven-director districts, urban school districts and metropolitan school districts, as defined in section 160.011, RSMo.

(L. 1986 H.B. 903 § 1, A.L. 1989 H.B. 77 et al.)

Effective 6-13-89

*Transferred 1994; formerly 701.120

Testing for asbestos, schools--report, contents of--reports of departments.

643.263. 1. Each public school district and private or parochial school in Missouri shall report to the department of health and senior services

the results of the examination of its structures for friable asbestos as required by the Environmental Protection Agency under the Toxic Substances Control Act, PL 94-469. All such reports shall be filed with the department of health and senior services before March 1, 1987. Other political subdivisions shall assess asbestos in buildings owned, leased or operated by the political subdivisions and report the results of the examination of its structures for friable asbestos to the department of health and senior services by December 31, 1991. The results of the assessment shall be public information and shall be readily available to the public and employees of each political subdivision and each school district and private and parochial school.

2. If the assessment indicates the presence of asbestos-containing materials, the report shall identify the location of all materials containing asbestos, the location and square footage of friable asbestos, the average number of persons exposed, the percent of asbestos found in the material, the test used to assess the material and plans for management of any friable asbestos. The report shall also describe any plans for interim measures, such as treating or covering friable asbestos, to be taken pending management of the material. Any political subdivision, any school district and any private or parochial school which adopts interim measures or which has not completed its management plan shall reevaluate the material biennially and report its findings to the department of health and senior services and make its findings available to its employees and the public. Any political subdivision, any school district and any private or parochial school which identifies nonfriable asbestos shall, no less often than every three years, reevaluate the material and report its findings to the department of health and senior services and make its findings available to its employees and the public. The department of health and senior services shall provide technical assistance including training, consultation and inspection upon request to political subdivisions in identifying buildings owned, leased or operated by political subdivisions which have asbestos-containing materials.

3. The department of health and senior services shall annually provide the department of elementary and secondary education with a list of all public school districts whose buildings contain friable asbestos.

4. The department of health and senior services shall, in cooperation with the office of administration, assess asbestos in buildings owned, operated or leased by the state of Missouri and report its findings to the office of administration.

(L. 1986 H.B. 903 § 2, A.L. 1987 S.B. 95, A.L. 1989 H.B. 77, et al.)

Effective 6-13-89

*Transferred 1994; formerly 701.122

Department of health and senior services, department of natural resources, interagency agreement.

643.265. The department of health and senior services and the department of natural resources shall develop an interagency agreement establishing agency responsibilities and procedures concerning asbestos reporting, removal and treatment. The department of health and senior services is hereby designated the state agency for the administration of loans and grants under the Asbestos School Hazard Abatement Act of 1984, Public Law 98-377, and other federally funded loan or grant programs for the abatement of asbestos.

(L. 1986 H.B. 903 § 3)

*Transferred 1994; formerly 701.125

Citation of law--mandate of Congress.

643.300. Sections 643.300 to 643.355 shall be known as the "Air Quality Attainment Act". The enactment of the air quality attainment act is a mandate of the United States Congress under the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq.

(L. 1994 S.B. 590)

*Provisional effective date--see § 643.360

Commission to adopt state implementation plan, nonattainment areas, certain cities and counties--emission reductions established--department to establish air quality baseline--cost of reduction measures, determination--emissions inspection program, report, public information program.

643.305. 1. The air conservation commission shall adopt a state implementation plan to bring all nonattainment areas of the state which are located within a city not within a county, any county of the first classification having a population of over nine hundred thousand inhabitants, any county of the first classification with a charter form of government and a population of not more than two hundred twenty thousand

inhabitants and not less than two hundred thousand inhabitants, any county of the first classification without a charter form of government with a population of not more than one hundred eighty thousand inhabitants and not less than one hundred seventy thousand inhabitants and any county of the first classification without a charter form of government with a population of not more than eighty-two thousand inhabitants and not less than eighty thousand inhabitants, into compliance with and to maintain the National Ambient Air Quality Standards and any regulations promulgated by the United States Environmental Protection Agency under the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq., on the required date or dates as such dates are established under the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq., including any extensions authorized pursuant to that act.

2. The commission shall establish the amount of emissions reductions required to achieve the goal established pursuant to subsection 1 of this section.

3. The department shall establish an air quality baseline for all nonattainment areas of the state which are located within a metropolitan statistical area with a population of at least one million inhabitants as defined by the federal Office of Management and Budget or its successor agency. The air quality baseline shall include, where practical, actual air contaminant emissions data and data on the atmospheric concentrations of pollution and pollution precursors for all nonattainment areas.

4. The department shall determine the costs and benefits of alternative reduction measures including reductions of emissions from stationary and mobile sources and traffic control measures. The department of transportation, regional planning commissions and metropolitan planning organizations shall participate with the department and provide information necessary to determine the costs and benefits of emissions reduction measures.

5. The department shall evaluate any motor vehicle emissions inspection program established under section 307.366, RSMo, or sections 643.300 to 643.355 and shall annually include in the report to the commission and the general assembly required under section 643.192, beginning on January 1, 1996, a detailed accounting of the inspection costs and repair costs incurred by vehicle owners and of the emissions reductions produced or incurred by the program. The department may use a representative sample of vehicles to provide a statistically valid estimate of the repair costs and emissions reductions. The report shall also include a recommendation to the general assembly on whether the emissions inspection program should be continued, modified or terminated.

6. The department shall establish a program of public information and education to educate the citizens of the state about the costs and benefits associated with reaching attainment of the National Ambient Air Quality Standards and the costs and benefits of all measures which are considered to attain those standards. This shall be done prior to the commission's action under subsection 1 of this section.

(L. 1994 S.B. 590)

*Provisional effective date--see § 643.360

Commission to establish motor vehicle emissions inspection program, certain cities and counties, exceptions--request attorney general to bring lawsuit--interagency agreement for enforcement, when--selection of person to operate inspection facility or program, procedure, contract requirement--program criteria--selection of contractors, minorities, motor vehicle dealers--sale of analyzer to department when --reformulated gasoline in nonattainment area.

643.310. 1. The commission may, by rule, establish a motor vehicle emissions inspection program pursuant to sections 643.300 to 643.355 for any portion of a nonattainment area located within the area described in subsection 1 of section 643.305, except for any portion of the nonattainment area which is located in a county of the first classification without a charter form of government with a population of less than one hundred thousand inhabitants according to the most recent decennial census, except that the commission may establish a motor vehicle emissions inspection program pursuant to sections 643.300 to 643.355 in such county only for motor vehicles owned by residents of such county who have chosen to participate in such a program in lieu of the provisions of section 307.366, RSMo. The commission shall ensure that, for each nonattainment area, the state implementation plan established pursuant to subsection 1 of section 643.305 incorporates and receives all applicable credits allowed by the United States Environmental Protection Agency for emission reduction programs in other nonattainment areas of like designation in other states. The commission shall ensure that emission reduction amounts established pursuant to subsection 2 of section 643.305 shall be consistent with and not exceed the emissions reduction amounts required by the United States Environmental Protection Agency for other nonattainment areas of like designation in other states. No motor vehicle emissions inspection program shall be required to comply with subsection 1 of section 643.305 unless the plan established thereunder takes full advantage of any changes in requirements or any agreements made or entered into by the United States Environmental Protection Agency and any entity or entities on behalf of a nonattainment area concerning compliance with National Ambient Air Quality Standards of the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq., and the regulations promulgated thereunder. The air conservation commission shall request and it shall be the duty of the attorney general to bring, in a court of competent jurisdiction, an action challenging the authority of the United States Environmental Protection Agency to impose sanctions for failure to attain National Ambient Air Quality Standards and failure to provide for required emission reductions under the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq. The action shall seek to define the required emission reductions and the credits allowed for current and planned emission reductions measures. The air conservation commission shall request and it shall be the duty of the attorney general to bring an action to obtain injunctive relief to enjoin and restrain the imposition of sanctions on the state of Missouri under the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq., until all actions initiated pursuant to this section have been decided. Provisions of section

307.366, RSMo, to the contrary notwithstanding, the requirements of sections 643.300 to 643.355 shall apply to those areas designated by the commission pursuant to this section in lieu of the provisions of section 307.366, RSMo.

2. No later than the effective date of this section, the department of natural resources and the Missouri highway patrol shall enter into an interagency agreement covering all aspects of the administration and enforcement of section 307.366, RSMo, and sections 643.300 to 643.355.

3. (1) The department, with the cooperation and approval of the commissioner of administration, shall select a person or persons to operate an inspection facility or inspection program pursuant to sections 643.300 to 643.355, under a bid procedure or under a negotiated process or a combination thereof based on criteria and expectations established by the department. This process may use either a licensing arrangement or contractual arrangement with the selected party or parties. The selection of persons to operate inspection facilities or inspection programs shall be exempt from the provisions of all site procurement laws. The number of locations shall be no less than the number needed to provide adequate service to customers and establish an emissions inspection program which satisfies the requirements of this section. Each person who is authorized to operate a station pursuant to this section shall be capable of providing adequate and cost-effective service to customers.

(2) Service management, coordination and data processing may be provided by the department or by another person, including a contractor or licensee, based upon the most cost-effective proposal for service.

(3) A license or contract shall be for a period of up to seven years, consistent with the provisions of article IV, section 28 of the Missouri Constitution, and licenses or contracts shall be annually reviewed. A license or contract may be suspended or revoked if the licensee or contractor is not meeting the conditions of sections 643.300 to 643.355, all applicable rules, the license agreement or contract as determined by the department. A licensee or contractor found to have violated sections 643.300 to 643.355, applicable rules or the conditions of the license agreement or contract shall be in violation of section 643.151 and subject to the penalties provided thereunder.

4. The inspection program shall satisfy the following criteria:

(1) There shall be an adequate number of stations to ensure that no more than twenty percent of all persons residing in an affected nonattainment area reside farther than five miles from the nearest inspection station, and consideration shall be given to employment, locations and commuting patterns when selecting the locations of the stations;

(2) There shall be an adequate number of inspection lanes at each facility so that no more than five percent of all persons having an inspection are required to wait more than fifteen minutes before the inspection begins;

(3) The days and daily hours of operation shall include at least those hours specified by the department, which shall include, at a minimum, twelve continuous hours of operation on all weekdays excepting federal holidays, and six continuous hours of operation on all Saturdays excepting federal holidays;

(4) The emissions inspection program shall include a simulated on-road emissions inspection component, including pressure and purge tests, which satisfies the requirements established by regulation of the United States Environmental Protection Agency and may include a visual inspection component;

(5) The inspection stations shall be test-only stations and shall not offer motor vehicle emissions repairs, parts or services of any kind;

(6) No person operating or employed by an emissions inspection station shall repair or maintain motor vehicle emission systems or pollution control devices for compensation of any kind.

5. The commission, the department of economic development and the office of administration shall, in cooperation with the minority business advocacy commission, select the contractor or contractors to provide an inspection program which satisfies the minimum requirements of this section in accordance with the requirements of section 33.752, RSMo, and chapter 34, RSMo. The commission, the office of administration and the department of economic development, in cooperation with the minority business advocacy commission, shall ensure adequate minority business participation in the selection of the contractor or contractors to provide an inspection program pursuant to this section. The commission, the office of administration and the department of economic development shall ensure adequate participation of Missouri businesses in the selection of the contractor or contractors to provide an inspection program pursuant to this section.

6. With approval of the commission and pursuant to rules adopted by the commission, an organization whose members are motor vehicle dealers or leasing companies may establish one or more additional emissions inspection facilities, which may be either mobile or stationary, to be used solely to inspect motor vehicles owned and held for sale or lease by the members of the organization. With approval of the commission and pursuant to rules adopted by the commission, any person operating a fleet of five hundred or more motor vehicles may establish one or more additional emissions inspection facilities, which may be either mobile or stationary, to be used solely to inspect motor vehicles owned or leased and operated by the person establishing the facility. The inspections performed in facilities established pursuant to this subsection shall be performed by a contractor selected by the commission pursuant to this section and the contractor performing such inspections shall be responsible solely to the department and shall satisfy all applicable requirements of sections 643.300 to 643.355.

7. Any person who owns Missouri analyzer system emission inspection equipment as defined by rule, used to provide emissions inspections

pursuant to section 307.366, RSMo, at a facility located in an area in which an emissions inspection program has been established pursuant to sections 643.300 to 643.355 may, within twelve months of the implementation of an emissions inspection program pursuant to sections 643.300 to 643.355, sell such equipment to the department of natural resources at current market value as established by an independent appraisal provided that the equipment is fully functional and has been maintained according to all applicable manufacturer's specifications and procedures. The department shall purchase such equipment using funds appropriated for that purpose from the Missouri air emission reduction fund. Any person who, prior to January 1, 1992, contracted to lease or lease purchase, or purchased by borrowing a portion of the funds secured by a chattel mortgage, Missouri analyzer system emission inspection equipment used to provide emissions inspections pursuant to section 307.366, RSMo, at a facility located in an area in which an emissions inspection program has been established pursuant to sections 643.300 to 643.355, and has made all payments required under the contract, may, within twelve months of the implementation of an emissions inspection program pursuant to sections 643.300 to 643.355, request the department of natural resources to take possession of such equipment and assume all payment obligations owed on such equipment which obligations are not in excess of one hundred and twenty-five percent of the current market value as established by an independent appraisal, provided that the equipment is fully functional and has been maintained according to all applicable manufacturer's specifications and procedures. The department shall take possession of such equipment and pay such obligations using funds appropriated for that purpose from the Missouri air emission reduction fund.

8. If the governor applies to the administrator of the Environmental Protection Agency to require federal reformulated gasoline in nonattainment areas, nothing in sections 643.300 to 643.355 shall prevent the storage of conventional gasoline in nonattainment areas which is intended for sale to agricultural, commercial or retail customers outside said nonattainment areas subject to reformulated gasoline.

9. The governor, the department of natural resources, and the commission shall work to ensure an orderly transition period in the nonattainment area for the introduction of reformulated gasoline. Priority shall be given to ensure the petroleum refiners ample time to organize, structure, and implement both the production and the delivery of reformulated gasoline to the nonattainment area, so that consumers will see an orderly, seamless market substitution.

(L. 1994 S.B. 590, A.L. 1998 S.B. 619, A.L. 1999 H.B. 603, et al. merged with S.B. 19, A.L. 2003 S.B. 54)

Reformulated gasoline program.

643.312. The air conservation commission may establish, by rule, a state reformulated gasoline program to prohibit the sale or dispensing of conventional gasoline for use in motor vehicles. If established, such program shall be implemented and reformulated gasoline shall be available at the retail level in the nonattainment area described in section 643.305 by June 1, 1999. The effectiveness of such program in improving air quality shall be at least equal to, and cost competitive with, the federal reformulated gasoline program, 42 U.S.C. 7545. Subject to the conditions of this section, any reformulated gasoline program established pursuant to this section shall not preclude the use of ethanol.

(L. 1998 S.B. 619 § 1)

Effective 1-1-99

Motor vehicles subject to program, when, exceptions--reciprocity with other states--dealer inspection, return of motor vehicle for failing inspection, options, violation.

643.315. 1. Except as provided in sections 643.300 to 643.355, all motor vehicles which are domiciled, registered or primarily operated in an area for which the commission has established a motor vehicle emissions inspection program pursuant to sections 643.300 to 643.355, which may include all motor vehicles owned by residents of a county of the first classification without a charter form of government with a population of less than one hundred thousand inhabitants according to the most recent decennial census who have chosen to participate in such a program in lieu of the provisions of section 307.366, RSMo, shall be inspected and approved prior to sale or transfer. In addition, any such vehicle manufactured as an even-numbered model year vehicle shall be inspected and approved under the emissions inspection program established pursuant to sections 643.300 to 643.355 in each even-numbered calendar year and any such vehicle manufactured as an odd-numbered model year vehicle shall be inspected and approved under the emissions inspection program established pursuant to sections 643.300 to 643.355 in each odd-numbered calendar year. All motor vehicles subject to the inspection requirements of sections 643.300 to 643.355 shall display a valid emissions inspection sticker, and when applicable, a valid emissions inspection certificate shall be presented at the time of registration or registration renewal of such motor vehicle.

2. No emission standard established by the commission for a given make and model year shall exceed the lesser of the following:

- (1) The emission standard for that vehicle model year as established by the United States Environmental Protection Agency; or
- (2) The emission standard for that vehicle make and model year as established by the vehicle manufacturer.

3. The inspection requirement of subsection 1 of this section shall apply to all motor vehicles except:

- (1) Motor vehicles with a manufacturer's gross vehicle weight rating in excess of eight thousand five hundred pounds;
- (2) Motorcycles and motortricycles if such vehicles are exempted from the motor vehicle emissions inspection under federal regulation and approved by the commission by rule;
- (3) Model year vehicles manufactured twenty-six years or more prior to the current model year;
- (4) Vehicles which are powered exclusively by electric or hydrogen power or by fuels other than gasoline which are exempted from the motor vehicle emissions inspection under federal regulation and approved by the commission by rule;
- (5) Motor vehicles registered in an area subject to the inspection requirements of sections 643.300 to 643.355 which are domiciled and operated exclusively in an area of the state not subject to the inspection requirements of sections 643.300 to 643.355, but only if the owner of such vehicle presents to the department an affidavit that the vehicle will be operated exclusively in an area of the state not subject to the inspection requirements of sections 643.300 to 643.355 for the next twenty-four months, and the owner applies for and receives a waiver which shall be presented at the time of registration or registration renewal;
- (6) New and unused motor vehicles, of model years of the current calendar year and of any calendar year within two years of such calendar year, which have an odometer reading of less than six thousand miles at the time of original sale by a motor vehicle manufacturer or licensed motor vehicle dealer to the first user; and
- (7) Historic motor vehicles registered pursuant to section 301.131, RSMo.

4. The commission may, by rule, allow inspection reciprocity with other states having equivalent or more stringent testing and waiver requirements than those established pursuant to sections 643.300 to 643.355.

5. (1) At the time of sale, a licensed motor vehicle dealer, as defined in section 301.550, RSMo, may choose to sell a motor vehicle subject to the inspection requirements of sections 643.300 to 643.355 either:

- (a) With prior inspection and approval as provided in subdivision (2) of this subsection; or
- (b) Without prior inspection and approval as provided in subdivision (3) of this subsection.

(2) If the dealer chooses to sell the vehicle with prior inspection and approval, the dealer shall disclose, in writing, prior to sale, whether the vehicle obtained approval by meeting the emissions standards established pursuant to sections 643.300 to 643.355 or by obtaining a waiver pursuant to section 643.335. A vehicle sold pursuant to this subdivision by a licensed motor vehicle dealer shall be inspected and approved within the one hundred twenty days immediately preceding the date of sale, and, for the purpose of registration of such vehicle, such inspection shall be considered timely.

(3) If the dealer chooses to sell the vehicle without prior inspection and approval, the purchaser may return the vehicle within ten days of the date of purchase, provided that the vehicle has no more than one thousand additional miles since the time of sale, if the vehicle fails, upon inspection, to meet the emissions standards specified by the commission and the dealer shall have the vehicle inspected and approved without the option for a waiver of the emissions standard and return the vehicle to the purchaser with a valid emissions certificate and sticker within five working days or the purchaser and dealer may enter into any other mutually acceptable agreement. If the dealer chooses to sell the vehicle without prior inspection and approval, the dealer shall disclose conspicuously on the sales contract and bill of sale that the purchaser has the option to return the vehicle within ten days, provided that the vehicle has no more than one thousand additional miles since the time of sale, to have the dealer repair the vehicle and provide an emissions certificate and sticker within five working days if the vehicle fails, upon inspection, to meet the emissions standards established by the commission, or enter into any mutually acceptable agreement with the dealer. A violation of this subdivision shall be an unlawful practice as defined in section 407.020, RSMo. No emissions inspection shall be required pursuant to sections 643.300 to 643.360 for the sale of any motor vehicle which may be sold without a certificate of inspection and approval, as provided pursuant to subsection 2 of section 307.380, RSMo.

(L. 1994 S.B. 590, A.L. 1999 H.B. 603, et al. merged with S.B. 19, A.L. 2001 S.B. 435, A.L. 2003 S.B. 54, A.L. 2004 H.B. 996 and H.B. 1142 and H.B. 1201 and H.B. 1489)

Criteria for operation of inspection stations, established--department to inspect, require reports--sign, requirements, furnished by department, cost.

643.320. 1. The commission shall establish, by rule, procedures, standards, and requirements for the operation of emissions inspection stations and the conduct of emissions inspections.

2. The emissions inspection stations shall be operated in accordance with all requirements established by the commission under this section.

3. The department shall cause unannounced inspections to be made of the operation of each emissions inspection station at least once during each calendar year. The inspection may include submitting a known high emission vehicle for inspection without prior disclosure to the inspection station.

4. The department may require emissions inspection stations to furnish reports, upon forms furnished by the department for that purpose, that the department considers necessary for the administration of sections 643.300 to 643.355.

5. No emissions inspection required under sections 643.300 to 643.355 may be performed at an emissions inspection station unless there is conspicuously posted on the premises of the emissions inspection station a sign which is at least eight feet high and sixteen feet wide and which sign bears the legend: "This inspection is mandated by the United States Environmental Protection Agency under powers granted to it by your United States Senators and Representatives in Washington, D.C." A standard sign, designed by the department and containing letters of at least six inches in height, shall be used by all emissions inspection stations. Such signs shall be furnished by the department to each emissions inspection station at no cost to the station.

(L. 1994 S.B. 590)

*Provisional effective date--see § 643.360

Certificate and sticker, commission to establish, display of, requirements.

643.325. 1. The commission shall establish, by rule, an emissions inspection certificate and an emissions inspection sticker which indicate that a vehicle has been inspected and given approval under sections 643.300 to 643.355. The commission shall also establish, by rule, requirements for display of the sticker on a motor vehicle and requirements for the replacement of a sticker or certificate which has been lost or stolen. The emissions inspection certificate and the emissions inspection sticker shall each bear, in a conspicuous place, the legend: "This inspection is mandated by your United States Congress."

2. Each emissions inspection station shall provide an emissions inspection certificate and emissions inspection sticker to the owner of a vehicle which has been inspected and approved under the emissions inspection program.

(L. 1994 S.B. 590)

*Provisional effective date--see § 643.360

Vehicle failure on inspection, reinspection, charge--department to publish list of repairs, cost-effective measures, distribution--inspector to provide written estimate, cost of repairs--department to test facilities, violations.

643.330. 1. An owner whose vehicle fails, upon inspection, to meet the emissions standards specified by the commission may have the vehicle reinspected after making repairs or adjustments to the vehicle to reduce emissions.

2. No motor vehicle owner shall be charged an additional emissions inspection fee for emissions reinspections completed within thirty calendar days of the initial emissions inspection.

3. The department shall publish a list of emissions repair and adjustment procedures based on the ratio of potential emissions reductions to cost, and the list shall be distributed and made available at all emissions inspection stations. The list shall indicate the most cost-effective measures that a vehicle owner can take to reduce emissions.

4. The inspector shall provide in writing to the owner of a vehicle which fails, upon inspection, to meet the emissions standards, the nature of the vehicle's failure, the components or equipment responsible for the failure and the estimated cost of repair to the extent practical pursuant to rules promulgated by the commission.

5. The department shall cause unannounced tests of facilities which repair, service or maintain motor vehicle emissions components and equipments, including submitting known high emission vehicles with known defects for repair without prior disclosure to the repair facility. Any suspected violations of chapter 407, RSMo, shall be reported by the department to the attorney general who shall institute appropriate proceedings under sections 407.095 and 407.100, RSMo, regarding unlawful merchandising practices.

(L. 1994 S.B. 590)

*Provisional effective date--see § 643.360

Waiver amount established by commission, cost, limits--verification of repairs, procedure--waiver form, affidavit--amount, how calculated.

643.335. 1. The commission shall establish, by rule, a waiver amount which may be lower for older model vehicles and which, prior to January 1, 2001, shall be no greater than seventy-five dollars for model year vehicles prior to 1981, no greater than two hundred dollars for model year vehicles of 1981 to 1996 and no greater than four hundred and fifty dollars for model year vehicles of 1997 and all subsequent model years. On and after January 1, 2001, the commission may, by rule, set the waiver amount, except that the waiver amount shall not exceed the waiver amount provided in the federal Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and the regulations promulgated thereunder for the enhanced motor vehicle emissions inspection.

2. The commission shall establish, by rule, a form and a procedure for verifying that repair and adjustment was performed on a failing vehicle prior to the granting of a waiver and approval.

3. The waiver form established pursuant to subsection 2 of this section shall be an affidavit requiring:

(1) A statement signed by the repairer that the specified work was done and stating the itemized charges for the work; and

(2) A statement signed by the emissions inspection contractor that an inspection of the vehicle verified, to the extent practical, that the specified work was done.

4. A vehicle which fails upon reinspection to meet the emissions standards specified by the commission shall have the emissions standards waived and receive approval only if the owner furnishes a complete, signed affidavit satisfying the requirements of subsection 3 of this section and the cost of the parts, repairs and adjustment work performed is equal to or greater than the waiver amount established by the commission. Costs for repair work may only be included toward reaching the waiver amount if the repairs are performed by a recognized repair technician as defined by rule.

5. No cost for parts, repairs or adjustments shall be included toward reaching the waiver amount if such costs are covered by an emission control performance warranty provided by the manufacturer at no additional cost to the vehicle owner unless the vehicle owner provides, with the affidavit, a written denial of warranty remedy from the motor vehicle manufacturer, dealer or other person providing the warranty.

6. No cost for parts, repairs or adjustments shall be included toward reaching the waiver amount if such costs are required to correct the effects of tampering with emissions systems or air pollution control devices.

(L. 1994 S.B. 590, A.L. 1999 H.B. 603, et al. merged with S.B. 19)

Operation of vehicle without registration, when allowed.

643.340. 1. For the purpose of obtaining an emissions inspection only, a vehicle may be lawfully operated over the most direct route between the owner's usual domicile and an inspection station of the owner's choice, notwithstanding that the vehicle does not have a current state registration license.

2. A vehicle may be lawfully operated from an emissions inspection station to another place for the purpose of making repairs and back to the emissions inspection station, notwithstanding that the vehicle does not have a current state registration license.

(L. 1994 S.B. 590)

*Provisional effective date--see § 643.360

Transfer of registration not allowed without emissions certificate, when--exceptions.

643.345. In the year in which an emissions inspection is required under section 643.315, a certificate of registration for a motor vehicle shall not be transferred, renewed or issued unless the application for the transfer, renewal or issuance is accompanied by a current emissions inspection certificate issued not more than sixty days prior to the date of application, except that the director of revenue shall renew a vehicle's certificate of registration without a current emissions inspection certificate accompanying the application if satisfactory documentary evidence is presented at the time of application that the registration being renewed was properly transferred within a six-month period prior to the expiration of the registration.

(L. 1994 S.B. 590)

*Provisional effective date--see § 643.360

Inspection fee, reduction of, when--contractor to remit portion, deposit in Missouri air emission reduction fund, use of, balance not to lapse.

643.350. 1. A fee, not to exceed twenty-four dollars, may be charged for an emissions inspection conducted under the emissions inspection program established pursuant to sections 643.300 to 643.355, except that on days of operation, other than the last three days of operation in each calendar month, the fee shall be reduced by:

- (1) Ten dollars for any person who is required to wait more than thirty minutes before the inspection begins; and
- (2) Twenty dollars for any person who is required to wait more than sixty minutes before the inspection begins.

The waiting time shall begin at the time when the customer's vehicle is on the premises of the inspection station and available for inspection.

2. The commission shall establish, by rule, a time-stamping system to ensure that the time of arrival and the time inspection begins is accurately recorded for each vehicle at each emissions inspection facility.

3. The fee shall be conspicuously posted on the premises of each emissions inspection station.

4. The commission shall establish, by rule, the portion of the fee amount to be remitted by the contractor to the director of revenue and the number of days allowed for remitting fees.

5. The contractor shall remit the portion of fees collected, as established by the commission pursuant to this section, to the director of revenue within the time period established by the commission. The director of revenue shall deposit the fees received in the state treasury to the credit of the "Missouri Air Emission Reduction Fund", which is hereby created. Moneys in the fund shall, subject to appropriation, be expended for the administration and enforcement of sections 643.300 to 643.355 by the department of natural resources, the Missouri highway patrol, and other appropriate agencies. Any balance in the fund at the end of the biennium shall remain in the fund and shall not be subject to the provisions of section 33.080, RSMo. All interest earned by moneys in the fund shall accrue to the fund.

6. In addition to funds from the Missouri air emission reduction fund, costs of capital or operations may be supplemented, upon appropriation, from the general revenue fund, the state highway department fund, federal funds or other funds available for that purpose.

(L. 1994 S.B. 590, A.L. 1999 H.B. 603, et al. merged with S.B. 19)

Illegal acts, penalties.

643.355. 1. Any person who knowingly misrepresents himself or herself as an official emissions inspection station or an inspector or a recognized repair technician is guilty of a class C misdemeanor for the first offense and a class B misdemeanor for any subsequent offense. Any person who is found guilty or who has pleaded guilty to a violation of this subsection shall be considered to have committed an offense for the purposes of this subsection.

2. Any person who knowingly manufactures, conveys or possesses any counterfeit or illegally obtained emissions inspection certificate or a counterfeit or illegally obtained emissions inspection sticker is guilty of a class C misdemeanor for the first offense and a class B misdemeanor for any subsequent offense. Any person who is found guilty or who has pleaded guilty to a violation of this subsection shall be considered to have committed an offense for the purposes of this subsection.

3. Any person who knowingly displays or permits to be displayed, on any motor vehicle owned by such person, any counterfeit or illegally obtained emissions inspection sticker is guilty of an infraction.

4. Any person who knowingly uses any counterfeit or illegally obtained emissions inspection certificate for the purpose of obtaining any motor vehicle registration is guilty of an infraction for the first offense, a class C misdemeanor for the second offense and a class B misdemeanor for any subsequent offense.

5. Any person who knowingly operates a motor vehicle required to be inspected and approved pursuant to sections 643.300 to 643.355 without displaying a valid emissions inspection sticker as required pursuant to section 643.315 is guilty of an infraction for the first offense, a class C misdemeanor for the second offense and a class B misdemeanor for any subsequent offense.

6. Except as otherwise provided in this section, any person who violates a requirement of sections 643.300 to 643.355 or a rule promulgated to enforce sections 643.300 to 643.355 is guilty of an infraction.

7. The superintendent of the highway patrol may seize documents which the superintendent suspects are counterfeit or illegally obtained in violation of this section for the purpose of enforcing this section. Any person who violates any procedural requirement of sections 643.300 to 643.355 is subject to a fine, and such fine shall be not less than five times the amount of the fee charged pursuant to section 643.350 or one hundred dollars, whichever is greater, if the violation is intentional or one involving gross negligence.

(L. 1994 S.B. 590, A.L. 1999 H.B. 603, et al. merged with S.B. 19)

Act not effective until lawsuit filed by attorney general, injunction--action, contents.

643.360. This act* shall not take effect until a cause of action is filed by the attorney general on behalf of the state of Missouri and other appropriate parties in a federal court of appropriate jurisdiction requesting injunctive relief and to test the constitutionality and legality of sanctions threatened by the Environmental Protection Agency pursuant to the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq., and shall not take effect so long as a temporary restraining order or injunction relating to such sanctions shall be in effect. Such action may allege, among others, that the standards which determine that the St. Louis metropolitan statistical area is a nonattainment area are unreasonable in relation to the sanctions sought to be imposed by the Environmental Protection Agency by virtue of the following:

(1) That there is not sufficient substantial evidence to demonstrate a rational relationship between the ambient air conditions in the St. Louis metropolitan statistical area and the penalties sought to be imposed by the Environmental Protection Agency;

(2) That the standards which determine that the St. Louis metropolitan statistical area is a nonattainment area and the penalties threatened by the Environmental Protection Agency are arbitrary and lack a rational relationship to the overall purpose of the federal Clean Air Act, as amended, 42 U.S.C. 7401, et seq. in that;

(a) That at only one of the seventeen monitoring sites in the St. Louis metropolitan statistical area have there been more than the allowed number of exceedances during the past three years; and

(b) That for the exceedances at that single monitoring site, there exist purely local causes which do not reflect nor bear a true relationship to the ambient air quality of the St. Louis metropolitan statistical area; and

(3) That the penalties available to be imposed by the Environmental Protection Agency are unreasonable and arbitrary and bear no rational relationship to the ambient air quality of the St. Louis metropolitan statistical area in that:

(a) At the single exceeding monitoring site there exist purely local causes for the exceedances which do not bear a true relationship nor reflect the actual ambient air quality of the St. Louis metropolitan statistical area;

(b) That the state of Missouri should be given a reasonable time to correct the exceedances at the single exceeding site and the penalties should not be assessed nor accrue prior to such time;

(c) That it is unreasonable to impose on the state of Missouri the obligation to expend an estimated one hundred twenty-five million dollars to reach attainment based upon the single exceeding site and the existing local causes for the exceedances where those do not reflect nor bear a true relationship to the ambient air quality of the St. Louis metropolitan statistical area;

(d) That the fifteen percent reduction in volatile organic compound requirement in the federal Clean Air Act bears no relationship to the actual ambient air quality of the St. Louis metropolitan statistical area because the reduction is mandated by the Environmental Protection Agency whether or not the St. Louis metropolitan statistical area reaches attainment status.

(L. 1994 S.B. 590)

*"This act" (S.B. 590, 1994) contains numerous sections. Consult Disposition of Sections table for definitive listing.

EXPLANATION OF CONTINGENT EFFECTIVE DATE;

April 3, 1996

RE: State of Missouri v. United States Civil Action No. 4:94CV1288

"As you are aware, SB 590 contains a provision indicating that it would not take effect until a cause of action was filed by this office on behalf of the state in Federal Court testing the constitutionality and legality of the sanctions threatened by the Environmental Protection Agency (EPA). Also, the Act would not take effect as long as any TRO or injunction relating to EPA's sanction would be in effect. See § 643.360, RSMo. "Please be advised that on July 1, 1994, this office filed a complaint in the United States District Court for the Eastern District of Missouri requesting injunctive relief and challenging the constitutionality and legality of the threatened sanctions by the EPA. Although a temporary restraining order,

preliminary injunction and permanent injunction were all sought in the course of that matter, to date, no such relief has been entered by the court."

Jeremiah W. (Jay) Nixon Attorney General

Joseph P. Bindbeutel Assistant Attorney General

Polystyrene foam products made from ozone depleting chemical, sale or distribution, prohibited, penalty--effective when.

643.400. 1. No food or beverage products shall be sold, offered for sale, or distributed in this state that are packaged, wrapped, or enclosed in a container manufactured from polystyrene foam produced using fully halogenated chlorofluorocarbons.

2. Any distributor in this state engaged in the sale or distribution of extruded polystyrene foam products manufactured using fully halogenated chlorofluorocarbons shall certify to the department of natural resources that such foam products are not in violation of subsection 3 of this section.

3. Beginning January 1, 1992, no person shall sell, offer for sale, or distribute in this state any product manufactured in whole or in part of thermoformed or other extruded polystyrene foam manufactured using any fully halogenated chlorofluorocarbon (CFC) found by the United States Environmental Protection Agency to be an ozone-depleting chemical, including but not limited to:

(1) Polystyrene packaging, wrapping, or containers;

(2) Polystyrene foam sheets;

(3) Polystyrene foam board.

4. A person violating this section shall be guilty of a class A misdemeanor. Each day of violation shall constitute a separate and distinct offense.

(L. 1989 H.B. 438, et al. §§ 1, 2)

Effective 1-1-92

Compact entered into.

643.600. The Kansas-Missouri Air Quality Compact is hereby entered into and enacted into law with the state of Kansas, in the form substantially as follows:

KANSAS-MISSOURI AIR QUALITY

COMPACT

ARTICLE I. SHORT TITLE

1.1. This act shall be known and may be cited as the Kansas-Missouri Air Quality Compact.

ARTICLE II. DEFINITIONS

2.1. "Signatory state" shall mean a state party to this compact.

2.2. "Air pollution" shall mean the presence in the ambient air of one or more air contaminants in quantities, of characteristics and of a duration which directly and proximately cause or contribute to injury to human, animal or plant life or health or to property or which unreasonably interfere with the enjoyment of life or use of property.

2.3. "Air contaminant" shall mean any particulate matter or any gas or vapor or any combination thereof.

2.4. "Air contaminant source" shall mean any and all sources of emission of air contaminants whether privately or publicly owned or operated.

2.5. "Person" shall mean any individual, partnership, copartnership, firm, company, public or private corporation, association, joint stock company, trust, estate, political subdivision, or any governmental agency, board, department or bureau, or any other legal entity whatever which is recognized by law as the subject of rights and duties.

ARTICLE III. PURPOSES

3.1. Ambient air is not confined by the common boundary between Kansas and Missouri and is affected with a local, state and regional interest. The planning, conservation, and control of the quality of ambient air are public purposes of the respective signatory states.

The air resources of the area subject to the jurisdiction of the commission are common to Kansas and Missouri, and the uses of these resources are interdependent. A single agency is therefore essential for effective and economical direction, supervision and coordination of efforts and programs of federal, state and local governments and of private enterprise.

The signatory states recognize that the discharge into the ambient air of air contaminants so as to cause or contribute to air pollution is contrary to public policy; that air contaminants originating in one state may contribute to the degradation of air quality in the other; and that such degradation may present a hazard to the health, welfare and enjoyment of life and property of the people of both states. It is the purpose of the signatory states, by achieving uniform application of air pollution control regulations, to maintain purity of the common air resources, to protect the health, general welfare and physical property of the people, and to foster maximum employment and full industrial development of the state. Each state, and the commission hereinafter created, shall seek the accomplishment of these objectives through the prevention, abatement and control of air pollution by all practical and economically feasible methods.

ARTICLE IV. COMMISSION

4.1. Commission created. There is hereby created the Kansas-Missouri Air Quality Commission, herein called "the commission", with the powers and duties set forth herein, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the signatory states. The commission shall be a body corporate, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory states. The commission shall have jurisdiction hereunder with respect to air contaminant sources located in the district comprising the following counties of Missouri and Kansas: Cass, Clay, Jackson and Platte of Missouri; and Johnson, Leavenworth and Wyandotte of Kansas. The commission shall have the power to cooperate with federal, state and local agencies with respect to air pollution control matters which affect the air quality standards within the jurisdiction of the commission.

4.2. Membership. The commission shall consist of eleven members, one commissioner representing the appropriate federal agency having jurisdiction of air pollution matters, five commissioners from Kansas and five from Missouri, each of whom shall be a resident of such state, and at least three commissioners from each state shall be residents of the region subject to the jurisdiction of the commission hereunder. The commissioners from each state shall be qualified, chosen and appointed by each state in the manner and for the terms as provided by the laws of the respective states. Vacancies on the commission shall be filled for the unexpired term in the same manner as appointments to full terms.

4.3. Voting. Each commissioner representing a signatory state shall be entitled to a vote, but the commissioner representing the federal government shall vote only as hereinafter provided. All final actions of the commission shall be taken at meetings at which a majority of the members of the commission are present in person. All final actions of the commission shall require a favorable majority vote of the commissioners present. If an unresolved tie vote shall result on any matter properly before the commission, then the commissioner representing the federal government may cast the deciding vote on such matter if present at the meeting, and such vote, if cast, shall decide the matter.

4.4. Compensation. Members of the commission representing the signatory states may receive a per diem allowance as determined and paid by the legislatures of the respective signatory states. Members of the commission shall be reimbursed by the commission for necessary and actual expenses incurred in and incident to the performance of their duties.

4.5. Capacity. The commission shall have all corporate powers essential to the declared objects and purposes of the commission, and it may sue and be sued, enter into contracts and shall have a seal. The commission shall designate a resident agent in each signatory state to accept any service of process made upon the commission, and the names of such agents shall be filed with the secretary of state of each signatory state. The commission may retain counsel to represent it in any action at law brought by or against the commission.

4.6. Officers. The commission shall elect annually, from among its members, a chairman and vice chairman. The commission shall appoint an executive director who shall serve at the pleasure of the commission, who shall act as secretary, and who, together with such other commission personnel as the commission may determine, shall be bonded in such amount or amounts as the commission may require.

4.7. Personnel. Irrespective of the civil service, personnel or other merit systems laws of any of the signatory states, the commission shall fix the compensation of such personnel as may be necessary for the performance of the commission's functions. The executive director shall appoint, remove, and discharge the other officers and employees under such rules and regulations as the commission may prescribe.

4.8. Retirement. The commission may establish and maintain, independently or in conjunction with any one or more of the signatory states, a suitable retirement system for its employees. Employees of the commission shall be eligible for Social Security coverage in respect to old age and survivors insurance, provided that the commission takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs

of employee benefits as may be appropriate.

4.9. Assistance. The commission may borrow, accept, or contract for the services of personnel and other services or materials from any state, the United States or any subdivision or agency of either, from any interstate agency, or from any institution, person, firm or corporation.

4.10. Donations. The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services conditional or otherwise, from the United States, or any agency thereof, from any state or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and may receive, utilize and dispose of the same. The identity of any donor, the amount and character of any assistance, and the conditions, if any, attached thereto shall be set forth in the annual report of the commission.

4.11. Facilities. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, insure, and convey real and personal property and any interest therein.

4.12. Bylaws. The commission shall adopt, amend, and rescind bylaws and procedural rules for the conduct of its business.

4.13. Reports. The commission annually shall make to the chief executive, officials and legislative bodies of the signatory states, and to the public, a report on its programs, operations and finances. The commission may issue such additional public reports as it may deem desirable.

4.14. Information. The commission shall have the authority to collect and disseminate information.

4.15. Public records. All actions of the commission shall be taken at public meetings, at which the vote of each commissioner is recorded, and minutes of the commission shall be a public report open to inspection at its offices during regular hours except those portions of any hearing or minutes which concern confidential information as provided for under Article VIII of this compact.

ARTICLE V. POWERS AND DUTIES OF COMMISSION

5.1. General powers. Except as otherwise specifically provided in this compact, the commission shall have power to

(a) Adopt, amend and repeal rules and regulations implementing and consistent with this compact.

(b) Hold hearings relating to any aspect of or matter in the administration of this compact, and in connection therewith, compel the attendance of witnesses and the production of evidence.

(c) Issue such orders as may be necessary to effectuate the purposes of this compact and enforce the same by all appropriate administrative and judicial proceedings.

(d) Require access to records relating to emissions which cause or contribute to air pollution.

(e) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(f) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution.

(g) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this compact.

(h) Encourage state and local units of government to handle air pollution problems on a cooperative basis, and provide technical and consultative assistance therefor.

(i) Encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control.

(j) Determine by means of field studies and sampling the degree of air contamination and air pollution in any place.

(k) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere and make recommendations to appropriate public and private bodies with respect thereto.

(l) After hearing, establish ambient air quality standards for the entire area subject to the commission's jurisdiction or for any part thereof.

(m) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution.

(n) Advise, consult, contract and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal

agencies, and the federal government, and with interested persons or groups.

(o) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problem which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this compact, rules or regulations in force pursuant thereto, or any other provision of law.

5.2. Classification and reporting. The commission may, by rule or regulation, classify air contaminant sources which may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which relate to air pollution, and require reporting for any such class or classes. Classifications made pursuant to this subsection may be for application to the entire area subject to the commission's jurisdiction, or to any designated portion thereof, and may be made with special reference to effects on health, economic and land use factors, and physical effects of property; provided, that all such classification shall be made in accordance with the purposes of this compact, as set forth in Article III hereof. Any person operating or responsible for the operation of an air contaminant source of any class for which the rules and regulations of the commission require reporting shall make reports containing information as may be required concerning location, size and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

5.3. New installations.

(a) The commission may require that notice be given to it prior to the undertaking of the construction, installation or establishment of particular types or classes of new air contaminant sources specified in its rules and regulations.

(b) The commission may require the submission of plans, specifications and such other information as it deems necessary in order to determine the cumulative effect of such air contaminant source on the air quality standards within the area of its jurisdiction.

(c) For the purposes of this compact, addition to or enlargement or replacement of an air contaminant source, or any major alteration therein, shall be construed as construction, installation or establishment of a new air contaminant source.

(d) The absence or failure to issue a rule, regulation or order pursuant to this section shall not relieve any person from compliance with any emission standards or with any other provision of law.

5.4. Inspections. Any duly authorized officer, employee, or representative of the commission may enter and inspect any property, premise or place on or at which an air contaminant source is located at any reasonable time for the purpose of ascertaining the state of compliance with this compact and rules and regulations in force pursuant thereto. A suitably restricted search warrant, upon a showing of probable cause in writing and upon oath, may be issued by a court specified in section 6.6(a) of this compact to any such officer, employee, or representative for the purpose of enabling him to make such inspections. No person shall refuse entry or access to any authorized representative of the commission who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status.

5.5. Emission standards.

(a) After hearing in accordance with section 6.3 of this compact, the commission may, by rule or regulation, establish emission standards for any area within the commission's jurisdiction, consistent with the purposes of this compact as provided in Article III hereof. Such emission standards may be for the entire area subject to the commission's jurisdiction, or may vary from area to area dependent upon land use and other varying local conditions, as may be appropriate to facilitate accomplishment of the purposes of this compact.

(b) Nothing in this compact shall be construed to authorize the commission to require by rule, regulation or otherwise the kind or composition of materials or fuels, the type, manufacturer or nature of control devices or other equipment or processes to be used or employed by the owner or operator of any new or existing air contaminant source. Nothing in this compact shall be construed as limiting the power of the commission to establish general variances from required emission standards, as provided in subsection (f) of section 5.7 of this compact.

5.6. Enforcement.

(a) Whenever the executive director has reason to believe that a violation of any provision of this compact, or rule or regulation adopted pursuant thereto, has occurred, he may cause written notice to be served upon the alleged violator or violators and upon the state air pollution control agency of the state in which the alleged source is located. The notice shall specify the provision of this compact or rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. Any such order shall become final unless, no later than ten days after the date the notice and order are served, the person or persons named therein request in writing a hearing before the commission. Upon such request, the commission shall hold a hearing in accordance with the provisions of section 6.4 of this compact. In lieu of an order, the executive director may require that the alleged violator or violators appear before the commission for a hearing, at a time and place specified in the notice, and answer the charges complained of.

(b) If, after a hearing held pursuant to subsection (a) of this section, the commission finds that a violation or violations have occurred, it may affirm or modify the order of the executive director previously issued, or issue an appropriate order or orders for the prevention, abatement or control of the emissions involved or for the taking of such other corrective action as may be appropriate or it may retain jurisdiction, but defer final action to permit the state air pollution control agency to effect a satisfactory remedy. If, after hearing on an order contained in a notice, the commission finds that no violation has occurred or is occurring, it shall rescind the order. Any order issued as part of a notice or after hearing may prescribe the date or dates by which the violation or violations shall cease and may prescribe timetables for necessary action in preventing, abating or controlling the emissions.

(c) Nothing in this compact shall prevent the commission from making efforts to obtain voluntary compliance through warning, conference or any other appropriate means.

5.7. Variances.

(a) Any person who owns or is in control of any air contaminant source may apply to the commission for a variance from rules or regulations by filing an application with the executive director. The executive director shall promptly investigate the application and make a recommendation to the commission as to the disposition thereof. If the recommendation is against the granting of a variance, a public hearing shall be held, if requested by the applicant, in accordance with the provisions of section 6.4 of this compact. If the recommendation is for the granting of the variance, the commission may do so without a public hearing, except that, at the written request of any person aggrieved by the emissions resulting from the granting of the variance, a public hearing shall be held. In any hearing under this section, however, the burden of proof shall be on the person petitioning for a variance. After a hearing, the commission may grant a variance if it finds that:

1. The emissions occurring or proposed to occur do not endanger human health or safety; or
2. Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public; or
3. Such variance should be granted to effectuate the purposes of this compact as set out in Article III hereof.

(b) No variance shall be granted pursuant to this section until the commission has considered the relative interests of the applicant, other owners of property likely to be affected by the emissions, and the general public.

(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) and for time periods and under conditions that shall be specified by the commission in its order granting such variance.

(d) Any variance granted pursuant to this section may be renewed, on application, on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the commission on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice the commission finds that renewal is justified. Any application for renewal shall be made at least sixty days prior to the expiration of the variance.

(e) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of this compact.

(f) Notwithstanding any provision of this section to the contrary, the commission may, after a hearing in accordance with the provisions of section 6.3 of this compact, establish by rule or regulation variances from required emission standards which are uniformly applicable to specific types of air contaminant sources or to particular geographic areas within the commission's jurisdiction.

5.8. Emergency.

(a) Any other provisions of this compact notwithstanding, the commission may adopt rules or regulations authorizing the executive director to order persons causing or contributing to air pollution to reduce or discontinue immediately the emission of air contaminants when he finds that a generalized or specific condition of air pollution exists in any area subject to the jurisdiction of this commission and that in his opinion such condition creates an emergency requiring immediate action to protect human health or safety in such area.

(b) Upon issuance of any such order the commission shall fix a time and place for a hearing to be held before the commission not later than forty-eight hours after the issuance of the order to investigate and determine the factors causing or contributing to the emergency conditions. All persons whose interests are prejudiced or affected in any manner by any such order shall have the right to appear in person or by counsel at the hearing and to present evidence relevant to the subject of the hearings. Within twenty-four hours after completion of the hearing, the commission shall affirm, modify or set aside the order or make such other orders as the commission deems appropriate under the circumstances in accordance and consistent with the evidence adduced and shall notify all persons appearing in person or by counsel of its determination in writing by certified or registered mail.

(c) Nothing in this section shall be construed to limit any power of the President of the United States or the governor of either signatory state, or any other officer of either state, or the United States, to act in the event of an emergency.

ARTICLE VI. HEARING AND REVIEW

6.1. Public hearings. All hearings held by the commission shall be open to the public. All testimony taken before the commission shall be under oath and recorded in a written transcript. The transcript so recorded shall be made available to any member of the public or to any participant in such hearing upon payment of reasonable charges therefor as fixed by the commission.

6.2. Powers of hearing officer. All hearings shall be had before one or more members of the commission, or before an officer or employee of the commission expressly designated thereby to act as a hearing officer. Any person conducting the hearing, and the executive director, may issue in the name of the commission notices of hearings and subpoenas requiring attendance and testimony of witnesses and production of evidence relevant to any matter involved in such, and administer oaths and affirmations and examine witnesses.

6.3. Rules and regulations. The commission shall not adopt any rules or regulations, other than those relating to its internal organization, unless and until it has held a public hearing thereon, at which any person shall be entitled to appear and offer testimony with or without counsel. Notice of said hearing shall be published in a newspaper of general circulation in each county within the jurisdiction of the commission at least thirty days prior to such hearing, and shall be mailed to the air pollution control agencies of the signatory states. All rules and regulations so adopted by the commission shall be filed in the manner provided for by law for filing administrative rules in each of the signatory states and such rules and regulations shall not become effective until ten days after such filing.

6.4. Adversary hearings.

(a) At any hearing on an order directed to a specific person or persons, or a specific source of air contaminants, or on application for variance or renewal or revocation thereof, those persons, or the owner or operator of such source, or the applicant, shall be entitled to be a party to the proceedings, and the air pollution control agencies of the signatory states shall also be entitled to be parties. Any party shall be entitled to at least twenty days notice of such hearing by registered mail, and such notice shall also be published in a newspaper of general circulation in the county in which the alleged air contaminant source is located, and sent by ordinary mail to any person who has in writing requested notice. Any party shall be entitled to appear in person or by representative, with or without counsel, and make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of such actions with respect to any matter in issue including the validity under this compact of any commission order, rule, regulation or standard as it may affect such party. Any person aggrieved by the emissions from the alleged air contaminant source shall be entitled to appear and to testify with respect to the matter in controversy, subject to such restrictions and procedures as the commission may establish, but shall not be a party to such proceeding.

(b) In any adversary proceeding each party shall be entitled to present oral arguments or written briefs at or after the hearing, which shall be heard or read by each commissioner who renders or joins in rendering the order of the commission.

(c) In each adversary proceeding each commissioner who renders or joins in rendering the order of the commission shall, prior to taking final action thereon, either hear all the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs. The parties to such adversary proceeding may by written stipulation or by oral stipulation in the record at the hearing waive compliance with the provisions of this subsection.

(d) Every order by the commission in an adversary proceeding shall be in writing and shall include or be accompanied by findings of fact and conclusions of law. The findings of fact shall be stated separately from the conclusions of law and shall include a concise statement of the findings on which the commission bases its order.

6.5. Refusal to obey subpoena. In case of refusal to obey a subpoena issued in the name of the commission, any United States district court, district court of Kansas or circuit court of Missouri having jurisdiction may issue, upon the application of the person conducting the hearing, an order requiring attendance or production of evidence as the case may require. Any failure to obey an order may be punished by the court as contempt thereof. Subpoenas shall be served as provided by the law of the state in which they are served.

6.6. Judicial enforcement and review.

(a) It shall be the duty of any person to comply with any final order issued against him by the commission in accordance with section 5.6 of this compact. In a signatory state, any court of general jurisdiction in any county in which the alleged air contaminant source is located, or any United States district court for the district in which the alleged air contaminant source is located, shall entertain and determine any action or proceeding brought by the commission to enforce an abatement order against the owner or operator of such air contaminant source. In any action to enforce or review such an order, the court may affirm, modify or reverse the order and may issue its decree enforcing the order as affirmed or modified.

(b) Any party to a hearing held under this compact who is aggrieved by any order made by the commission shall be entitled to a judicial review thereof. Such review may be had by filing a verified petition in any of the appropriate courts designated in subsection (a) of this section setting out such order and alleging specifically wherein said order is:

1. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.

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2. Contrary to constitutional right, power, privilege or immunity.

3. In excess of authority or jurisdiction conferred by this compact or statutes in implementation hereof.

4. Without observance of procedure required by law.

5. Unsupported by substantial evidence. The petition for review shall be filed within thirty days after receipt of written notice that such order has been issued. Written notice of the filing of such petition for review and a copy of said petition shall be personally served upon the commission. Within fifteen days after filing the petition, the petitioner shall secure from the commission a certified copy of the transcript of any hearing or hearings held in connection with the issuance of the order, the review of which is sought, and file the same with the clerk of the court in which the proceeding for review is pending. An extension of time in which to file such transcript may be granted by the court for good cause shown. Inability to obtain the transcript within the specified time shall be good cause. Failure to file the transcript within fifteen days, or to secure an extension of time therefor, shall be cause for the dismissal of the petition. Where more than one party may be aggrieved by the order only one proceeding for review may be had, and the court in which a petition for review is first properly filed shall have jurisdiction.

(c) The filing of a petition for review hereunder shall stay the commission's order unless the court upon motion by any party shall determine otherwise.

(d) No review of a commission order shall be had except in accordance with the provisions of this compact.

ARTICLE VII. FINANCE

7.1. Appropriations. The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof, specifying the amount or amounts to be appropriated by each of the party states. Aside from such support as may be available to the commission from other sources, the cost of operating and maintaining the commission shall be borne equally by the party states. The commission shall not incur any obligations prior to the allotment of funds adequate to meet the same by the party states or the setting aside of such funds from other sources.

7.2. Expenses. The expenses and any other costs for each member of the commission shall be met by the commission in accordance with such standards and procedures as it may establish under its bylaws.

7.3. Accounts. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to an annual independent audit. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the commission. The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the signatory parties and by any persons authorized by the commission.

ARTICLE VIII. CONFIDENTIALITY

8.1. No information relating to secret processes or trade secrets affecting methods of manufacture shall be disclosed to the public, if so requested by the owner or operator thereof, and all such information shall be kept confidential. At any public hearing any such confidential information shall, if requested by respondent, be received in camera and kept under seal.

ARTICLE IX. VIOLATIONS

9.1. Any violation of any rule or regulation, duly adopted under this compact, except pursuant to a variance, may be enjoined by the commission upon institution of a civil action in any court of competent jurisdiction for injunctive relief to prevent any further violation and, in the case of any willful violation, the court may assess a penalty of not to exceed one thousand dollars per day for each day or part thereof the violation continues, and any such penalty shall be paid into the general revenue fund of the state where imposed.

9.2. No liabilities shall be imposed upon any person pursuant to this compact for violations of any provision thereof, or any rule or regulation adopted thereunder, caused by an act of God, war, strike, riot, catastrophe or other cause beyond the control of such person.

9.3. Any willful disclosure of confidential information to any person other than one entitled to information under this compact shall be deemed to be a misdemeanor subject to the laws of the party state in which such violation shall have occurred.

ARTICLE X. COMPACT NOT LIMITING

10.1. Powers of states. Nothing in this compact shall be construed to limit the powers of either signatory state or any of their subdivisions to enact and enforce laws or ordinances for the prevention, abatement or control of air pollution, provided that such laws, ordinances, or enforcement activities meet the minimum provisions of this compact, or any standard, rule or regulation promulgated hereunder, or to prevent or restrict either signatory state or any subdivision thereof in requiring or prescribing measures of air pollution prevention, abatement or control in addition to those which may be required by either signatory state or the commission acting pursuant to this compact.

10.2. Powers of United States. Nothing in this compact shall be construed to relinquish the functions, powers and duties of the Congress of the United States with respect to the control, abatement or prevention of air pollution.

ARTICLE XI. CONSTRUCTION

11.1. Construction and severability. It is the legislative intent that the provisions of this compact be reasonably and liberally construed. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of either state or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby.

11.2. Agency cooperation. The several departments, agencies and officers of the signatory parties are authorized to cooperate with the commission. Within existing statutory authorizations, any such department, agency or officer may make contract with, lend, or otherwise furnish the commission with such items and services as are contemplated by any provision of the compact.

11.3. Effect of compact on rights of certain persons. Persons other than either of the signatory states or the commission shall not acquire actionable rights by virtue of this compact. A determination by the executive director or the commission that air pollution or air contamination exists or that any standard, rule or regulation has been violated, whether or not a proceeding or action is brought by the state or the commission, shall not create by reason thereof any presumption of law or finding of fact which shall inure to or be for the benefit of any person other than the state or the commission.

ARTICLE XII. EFFECTIVE DATE AND TERMINATION

12.1. Effective date; repeal. This compact shall take effect and be in force when it has been enacted into law by the states of Missouri and Kansas and is approved by the Congress of the United States. The compact shall continue in force until expressly repealed by either party state, but no such repeal shall take effect until ninety days after the effective date of the statute repealing this compact, provided that if expressly repealed by both party states, such repeal shall take effect immediately as provided in such enactments.

ARTICLE XIII. AMENDMENTS

13.1. The right to alter, amend or repeal this compact is expressly reserved by the signatory states.

(L. 1967 p. 297 § 1)

*Transferred 1986; formerly 203.600

Compact to be effective, when--commissioners, qualifications, terms, vacancies, how filled.

643.610. 1. Within thirty days after October 13, 1967, or within thirty days after the effective date of the act of the legislature of the state of Kansas enacting the Kansas-Missouri air quality compact, whichever date is later, the governor shall appoint five persons to be commissioners of the Kansas-Missouri air quality commission, created by compact between the states of Kansas and Missouri. All commissioners so appointed shall be qualified voters of the state of Missouri, and at least three commissioners shall reside within the district established by the compact. At no time shall more than one commissioner reside within the same county. Officers and employees of any state agency or commission having jurisdiction over air pollution control in the state of Missouri shall be eligible for appointment to the Kansas-Missouri air quality commission.

2. The commissioners appointed pursuant to subsection 1 of this section shall hold their respective offices for a term of four years, except that the commissioners first appointed shall hold their offices for terms as follows: Two for terms ending June 30, 1972, one for a term ending June 30, 1971, one for a term ending June 30, 1970, and one for a term ending June 30, 1969, and the governor in making the appointment shall designate the term for which each is to serve; and on July first of each year thereafter the governor shall appoint successors of like qualifications to fill the vacancies occurring by reason of the expiration of the terms of service as herein provided. In case of a vacancy on said commission, the governor shall appoint a successor of like qualifications for the unexpired term.

(L. 1967 p. 297 § 2)

*Transferred 1986; formerly 203.610

Commissioners, per diem allowed.

643.620. Commissioners appointed pursuant to section 643.610 shall receive for the time spent at meetings of the commission and in the performance of their duties as members of said commission a per diem allowance of twenty-five dollars regardless of whether such duties are performed or meetings are held within or without the state of Missouri. Such per diem shall be paid from amounts appropriated by the legislature for such purpose.

(L. 1967 p. 297 § 3)

*Transferred 1986; formerly 203.620

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